

Dyamone White, et al. v. State Board of Election Commissioners, et al.

Christopher Bonneau

September 29, 2023

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DYAMONE WHITE, ET AL.

PLAINTIFFS

V.

NO. 4:22-CV-00062-SA-JMV

STATE BOARD OF ELECTION
COMMISSIONERS, ET AL.

DEFENDANTS

DEPOSITION OF CHRISTOPHER BONNEAU

Taken at the instance of the Plaintiffs at Wise,
Carter, Child & Caraway, 401 E Capitol, Suite 600
Jackson, Mississippi 39201-2688, on Friday,
September 29, 2023,
beginning at 9:00 a.m.

REPORTED BY:

ROBIN G. BURWELL, CCR #1651

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 MING CHEUNG, ESQ.</p> <p>4 ARI J. SAVITZKY, ESQ.</p> <p>5 Destiny Ruiz</p> <p>6 American Civil Liberties Union of</p> <p>7 Mississippi Foundation</p> <p>8 125 Broad Street, 18th Floor</p> <p>9 New York, New York 1004</p> <p>10 mcheung@aclu.org</p> <p>11</p> <p>12 JOSHUA TOM, ESQ.</p> <p>13 American Civil Liberties Union of</p> <p>14 Mississippi Foundation</p> <p>15 101 South Congress Street</p> <p>16 Jackson, Mississippi 39201</p> <p>17 jtom@aclu-ms.org</p> <p>18</p> <p>19 LESLIE FAITH JONES, ESQ.</p> <p>20 Southern Poverty Law Center</p> <p>21 111 East Capitol Street, Suite 280</p> <p>22 Jackson, Mississippi 39201</p> <p>23 leslie.jones@splcenter.org</p> <p>24</p> <p>25 AHMED SOUSSI, ESQ.</p> <p>Southern Poverty Law Center</p> <p>150 E Ponce de Leon Avenue, Suite 340</p> <p>Decatur, Georgia 30030</p> <p>ahmed.soussi@splcenter.org</p> <p>COUNSEL FOR PLAINTIFFS</p> <p>MICHAEL B. WALLACE, ESQ.</p> <p>Wise Carter</p> <p>401 East Capitol Street, Suite 600</p> <p>Jackson, Mississippi 39201</p> <p>mbw@wisecarter.com</p> <p>CONT'D</p>	<p>1 INDEX</p> <p>2 Style.....1</p> <p>3 Appearances.....2</p> <p>4 Index4</p> <p>5 Certificate of Deponent169</p> <p>6 Certificate of Court Reporter170</p> <p>7 EXAMINATIONS</p> <p>8 Examination By Mr. Cheung5</p> <p>9 Examination By Mr. Wallace167</p> <p>10 EXHIBITS</p> <p>11 Exhibit 1 January Report15</p> <p>12 Exhibit 2 September Rebuttal Report15</p> <p>13 Exhibit 3 Orey October Report87</p> <p>14 Exhibit 4 Article116</p> <p>15 Exhibit 5 Alabama Transcript150</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 REX M. SHANNON, III, ESQ.</p> <p>2 GERALD KUCIA, ESQ.</p> <p>3 Special Assistant Attorney General</p> <p>4 Post Office Box 220</p> <p>5 Jackson, Mississippi 39205</p> <p>6 rex.shannon@ago.ms.gov</p> <p>7</p> <p>8 COUNSEL FOR DEFENDANTS</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CHRISTOPHER BONNEAU,</p> <p>2 having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 EXAMINATION BY MR. CHEUNG:</p> <p>5 Q. Good morning, Dr. Bonneau, my name is</p> <p>6 Ming Cheung. I'm an attorney with the ACLU. I'm</p> <p>7 here on behalf of the plaintiffs. I'll let my</p> <p>8 colleagues also identify themselves.</p> <p>9 MS. JONES: Leslie Faith Jones with</p> <p>10 Southern Poverty Law Center, also for the</p> <p>11 plaintiffs.</p> <p>12 MR. TOM: Hi, my name is Joshua Tom and</p> <p>13 I'm with ACLU Mississippi for the plaintiffs.</p> <p>14 MR. CHEUNG: Anyone else for the</p> <p>15 plaintiffs on the Zoom?</p> <p>16 MR. SAVITZKY: Yes, this is Ari</p> <p>17 Savitzky. I'm another attorney for the plaintiffs</p> <p>18 for ACLU. Good morning.</p> <p>19 MS. RUIZ: Hi, good morning. My name is</p> <p>20 Destiny and I'm paralegal at the ACLU.</p> <p>21 MR. WALLACE: As long as we're</p> <p>22 introducing ourselves. I'm Mike Wallace for the</p> <p>23 defense. Welcome to Wise Carter.</p> <p>24 MR. SHANNON: Good morning, I'm Rex</p> <p>25 Shannon with Mississippi Attorney General's Office</p>

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<p>1 here for the defendants.</p> <p>2 MR. KUCIA: Gerald Kucia with the</p> <p>3 Mississippi Attorney General's Office for the</p> <p>4 defendants.</p> <p>5 Q. (By Mr. Cheung) So, Dr. Bonneau, I</p> <p>6 believe you've been deposed before, but just in</p> <p>7 case I'd like to spend a minute going over some</p> <p>8 ground rules. Your attorney might object to some</p> <p>9 of the questions I ask, but in general unless he</p> <p>10 instructs you not to answer on the basis of</p> <p>11 privilege you still have to answer even if there</p> <p>12 is an objection. Do you understand that?</p> <p>13 A. I do.</p> <p>14 Q. Thank you. Do you understand that your</p> <p>15 answers today are under oath?</p> <p>16 A. I do.</p> <p>17 Q. And that means you must tell the truth</p> <p>18 just as if you were testifying in court?</p> <p>19 A. Yes.</p> <p>20 Q. Is there any reason you cannot provide</p> <p>21 complete and accurate testimony today?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. And because the court reporter can only</p> <p>24 take down verbal responses, do you understand that</p> <p>25 you have to answer verbally instead of nodding or</p>	<p>1 A. No.</p> <p>2 MR. CHEUNG: I think someone might have</p> <p>3 jumped into the Zoom just now.</p> <p>4 MR. SOUSSI: Hi, this is Ahmed Soussi</p> <p>5 with SPLC.</p> <p>6 Q. (By Mr. Cheung) Dr. Bonneau, I just</p> <p>7 have a few questions about sort of your</p> <p>8 preparation for the deposition today. How did you</p> <p>9 prepare for this deposition?</p> <p>10 A. I read over my reports. I met with the</p> <p>11 lawyers for the state and I read over the reports,</p> <p>12 particularly, the report by Dr. Orey.</p> <p>13 Q. And how much time would you say you</p> <p>14 spent preparing for this deposition?</p> <p>15 A. So depends what you mean by preparing.</p> <p>16 I would say that I've spent probably three hours</p> <p>17 preparing, just reading over reports and talking</p> <p>18 and meetings and so on. If you consider</p> <p>19 everything before this in the last two days, I</p> <p>20 mean, it's obviously more. But that's a good</p> <p>21 ballpark.</p> <p>22 Q. What else did you spend time on?</p> <p>23 A. Well, as I was preparing my rebuttal</p> <p>24 report, as well as my original report, I spent a</p> <p>25 lot of time. So if that counts as preparation for</p>
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<p>1 shaking your head?</p> <p>2 A. I do.</p> <p>3 Q. Thank you. And I'm going to try not to</p> <p>4 interrupt you today during your answers, you know,</p> <p>5 so that we have a clean transcript. I would also</p> <p>6 appreciate you if you wait until I ask a -- finish</p> <p>7 asking a question before providing your response.</p> <p>8 A. Sounds good.</p> <p>9 Q. Thank you. And if you don't understand</p> <p>10 a question, please let me know and I can try to</p> <p>11 ask a better question.</p> <p>12 A. Okay.</p> <p>13 Q. All my questions are great from the</p> <p>14 beginning.</p> <p>15 If you need to take a break, please feel</p> <p>16 to ask. I would just ask you to finish answering</p> <p>17 the question pending before you -- before we take</p> <p>18 a break, if that's okay.</p> <p>19 A. Sure.</p> <p>20 Q. I'd also ask you not to discuss your</p> <p>21 testimony with your attorneys during breaks unless</p> <p>22 it's about the scope of privilege in your</p> <p>23 responses. Is that okay?</p> <p>24 A. Sure.</p> <p>25 Q. Any questions before we begin?</p>	<p>1 the deposition. But in terms of since the report</p> <p>2 has been filed to today, I would estimate about</p> <p>3 three hours.</p> <p>4 Q. Okay. Other than your reports and</p> <p>5 Dr. Orey's report, did you review any other</p> <p>6 documents to prepare for the deposition?</p> <p>7 A. Not that I -- no, not since I filed my</p> <p>8 rebuttal report.</p> <p>9 Q. Okay. Did you jot down any notes while</p> <p>10 preparing for the deposition?</p> <p>11 A. No.</p> <p>12 Q. Apart from this case, how many times</p> <p>13 have you been retained as an expert in a case?</p> <p>14 A. I have been retained twice besides this</p> <p>15 case.</p> <p>16 Q. Which cases are those?</p> <p>17 A. One was the NAACP versus Alabama case.</p> <p>18 And the other one is a pending case in Colorado,</p> <p>19 Lopez versus The State of Colorado, I believe is</p> <p>20 the title of that case.</p> <p>21 Q. Lopez versus Griswold, does that sound</p> <p>22 right?</p> <p>23 A. Yeah, that's it.</p> <p>24 Q. So let's go through each one of those.</p> <p>25 In the Alabama case, do you recall what opinions</p>

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<p>1 you offered?</p> <p>2 A. I do.</p> <p>3 Q. What did you conclude in that case?</p> <p>4 A. I concluded that in the Alabama State</p> <p>5 Supreme Court elections there was not a violation</p> <p>6 of the Voting Right Act, that, in fact, African</p> <p>7 American candidates performed better --</p> <p>8 particularly African American Democratic</p> <p>9 candidates performed better than white Democratic</p> <p>10 candidates. Unfortunately there were no African</p> <p>11 American Republican candidates in there so we</p> <p>12 couldn't do that comparison. And so my conclusion</p> <p>13 was it was party more so than race.</p> <p>14 Q. Were you deposed in that case?</p> <p>15 A. I was.</p> <p>16 Q. Did you testify in court?</p> <p>17 A. I did.</p> <p>18 Q. And were you qualified as an expert on</p> <p>19 racially polarized voting?</p> <p>20 A. I was.</p> <p>21 Q. And specifically, were you qualified to</p> <p>22 testify about whether racially polarized voting,</p> <p>23 or RPV, whether it exists or what the causes were?</p> <p>24 A. So I did not conduct any independent</p> <p>25 analysis of racially polarized voting. I</p>	<p>1 that's a good summary. I mean, there were some</p> <p>2 differences between this case and the Alabama</p> <p>3 case, but yes.</p> <p>4 Q. And let's talk about the Colorado case.</p> <p>5 What was that case about?</p> <p>6 A. So in that case political candidates are</p> <p>7 suing the State of Colorado over their campaign</p> <p>8 finance restrictions, specifically the amount of</p> <p>9 money that individuals can donate to political</p> <p>10 campaigns.</p> <p>11 Q. And what opinions did you offer in that</p> <p>12 case?</p> <p>13 A. I offered that the -- so my analysis</p> <p>14 showed that Colorado has one of the lowest</p> <p>15 campaign finance limits in the country, and that</p> <p>16 these limits impede the ability of challengers to</p> <p>17 successfully compete against incumbents.</p> <p>18 Q. Were you deposed in that case?</p> <p>19 A. Yes.</p> <p>20 Q. Did you testify in court?</p> <p>21 A. It's pending. I'm supposed to, yes.</p> <p>22 Q. Okay.</p> <p>23 A. The case has not gone to trial yet.</p> <p>24 Q. But that case did not involve racially</p> <p>25 polarized voting?</p>
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<p>1 stipulated that the analysis that the plaintiffs</p> <p>2 have done was correct. And the question was what</p> <p>3 were the reasons why behind the patterns they</p> <p>4 observed.</p> <p>5 Q. And I know it's been -- it may have been</p> <p>6 a couple of years since that case, but I pulled up</p> <p>7 the Court's order related to your report. I'm</p> <p>8 going to read you a sentence from that order and</p> <p>9 you can let me know if it sounds about right. The</p> <p>10 Court in the order wrote: Dr. Bonneau was opining</p> <p>11 that party not race leads to a defeat of African</p> <p>12 American candidates. He's not opining that</p> <p>13 African American voters do or do not vote</p> <p>14 cohesively.</p> <p>15 Does that sound like an accurate summary</p> <p>16 of your report?</p> <p>17 A. It does.</p> <p>18 Q. Does that accurately describe your work</p> <p>19 in this case?</p> <p>20 A. Can you read it again?</p> <p>21 Q. Dr. Bonneau is opining a party not race</p> <p>22 leads to defeat of African American candidates.</p> <p>23 He is not opining that African American voters do</p> <p>24 or do not vote cohesively.</p> <p>25 A. Yes, I mean the difference -- yes,</p>	<p>1 A. It did not.</p> <p>2 Q. Thank you.</p> <p>3 Have you ever performed a racially</p> <p>4 polarized voting analysis yourself?</p> <p>5 A. No.</p> <p>6 Q. Just to drill down on that, have you</p> <p>7 ever conducted a homogenous precinct analysis?</p> <p>8 A. Not independently, no.</p> <p>9 Q. What about an ecological regression</p> <p>10 analysis?</p> <p>11 A. Not in the context of voting rights</p> <p>12 cases, no.</p> <p>13 Q. And ecological inference?</p> <p>14 A. So I mean, not in any published</p> <p>15 articles. So we're going back now to when I was</p> <p>16 in graduate school 25 years ago. I have</p> <p>17 recollections of performing that as part of like a</p> <p>18 class assignment in a methods class -- a political</p> <p>19 research methods class, but nothing that I've ever</p> <p>20 done my own research on or anything else.</p> <p>21 Q. So no publications on any of the three</p> <p>22 methods that we just discussed?</p> <p>23 A. Correct.</p> <p>24 Q. And not as part of any expert work</p> <p>25 you've done on a case?</p>

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<p>1 A. Correct.</p> <p>2 Q. And not part of any coursework that</p> <p>3 you've taught?</p> <p>4 A. That I've taught? I've taught the</p> <p>5 theoretical concept of -- so the ecological</p> <p>6 fallacies of pretty standard topic in political</p> <p>7 methodology courses, so I teach graduate students</p> <p>8 methods courses or philosophy of science courses.</p> <p>9 We do talk about that theoretically. But I've not</p> <p>10 taught the mechanics behind it, no.</p> <p>11 Q. Got it. So let's turn to the reports in</p> <p>12 this case. Did you prepare two reports?</p> <p>13 A. I did.</p> <p>14 Q. The first one was from January 2nd of</p> <p>15 this year?</p> <p>16 A. That sounds correct.</p> <p>17 Q. And then the most recent one a</p> <p>18 surrebuttal report from September 12th of this</p> <p>19 year?</p> <p>20 A. That sounds correct.</p> <p>21 Q. I'm going to give you a copy of that</p> <p>22 report just so you have it in front of you.</p> <p>23 A. Great.</p> <p>24 Q. I'm not trying to quiz you on anything</p> <p>25 in it.</p>	<p>1 Q. Would you mind giving us some highlights</p> <p>2 of the updates?</p> <p>3 A. I am now chair of the Spanish and</p> <p>4 Portuguese department.</p> <p>5 Q. Oh, how did that come about?</p> <p>6 A. How much time do we have? So the</p> <p>7 department was placed into receivership by the</p> <p>8 Dean, meaning they were no longer able to govern</p> <p>9 themselves due to a variety of longstanding policy</p> <p>10 violations and disputes. And so the Dean tasked</p> <p>11 me with going in for a couple of years to run the</p> <p>12 Spanish and Portuguese department.</p> <p>13 Q. Any other updates?</p> <p>14 A. I've got an article forthcoming about</p> <p>15 teaching in prison and prison education that's</p> <p>16 coming in an edited book. But I think those are</p> <p>17 the only things that have really changed since</p> <p>18 January.</p> <p>19 Q. Okay. So no updates related to judicial</p> <p>20 elections?</p> <p>21 A. No, I've been busy with Spanish and</p> <p>22 Portuguese.</p> <p>23 Q. And, Dr. Bonneau, are you familiar with</p> <p>24 the Gingles preconditions in voting rights cases?</p> <p>25 A. I am.</p>
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<p>1 A. That's fine.</p> <p>2 (Exhibit 1 marked for identification.)</p> <p>3 Q. (By Mr. Cheung) That's now been marked</p> <p>4 as Exhibit 1. Dr. Bonneau, can you look at it and</p> <p>5 confirm if that's your January report?</p> <p>6 A. It appears to be the case.</p> <p>7 Q. Thank you. Also handing your</p> <p>8 surrebuttal report to Ms. Burwell for marking.</p> <p>9 (Exhibit 2 marked for identification.)</p> <p>10 Q. (By Mr. Cheung) Dr. Bonneau, does that</p> <p>11 look like your September report, Plaintiff's</p> <p>12 Exhibit 2?</p> <p>13 A. It does.</p> <p>14 Q. Do those reports accurately reflect your</p> <p>15 opinions in this case?</p> <p>16 A. They do.</p> <p>17 Q. Do those reports omit any analysis that</p> <p>18 you've conducted for this case?</p> <p>19 A. They do not.</p> <p>20 Q. Are there any corrections you're aware</p> <p>21 of that you would like to make to the report?</p> <p>22 A. Not at this time.</p> <p>23 Q. Are there any updates to your CV since</p> <p>24 January 2023?</p> <p>25 A. There are.</p>	<p>1 Q. What is your understanding of the</p> <p>2 Gingles factors?</p> <p>3 A. So my understanding is there are three</p> <p>4 factors that are required. One has to do with</p> <p>5 racially polarized voting, such that African</p> <p>6 Americans are not able to elect candidates of</p> <p>7 their choice -- or generally able to elect</p> <p>8 candidates of their choice.</p> <p>9 There's a factor about the totality of</p> <p>10 circumstances that even if you establish racially</p> <p>11 polarized voting, that doesn't necessarily mean</p> <p>12 that there's a violation of the Voting Rights Act.</p> <p>13 In fact, this has to lead to certain kinds of</p> <p>14 outcomes.</p> <p>15 And there's another factor that I --</p> <p>16 escapes me at this moment.</p> <p>17 Q. You're not a lawyer?</p> <p>18 A. No, I am not.</p> <p>19 Q. So not expecting a perfect recall of the</p> <p>20 language from Gingles. But if I could read to you</p> <p>21 some of the language from Gingles and you tell me</p> <p>22 if that's consistent with your understanding.</p> <p>23 A. That would be great.</p> <p>24 Q. So Gingles one, the first factor, the</p> <p>25 Court said: First, the minority group must be</p>

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<p>1 able to demonstrate that it is sufficiently large</p> <p>2 and geographically compact to constitute a</p> <p>3 majority in a single-member district.</p> <p>4 Does that sound right?</p> <p>5 A. That does sound right.</p> <p>6 Q. Gingles two, second: The minority group</p> <p>7 must be able to show that it is politically</p> <p>8 cohesive.</p> <p>9 Does that sound right?</p> <p>10 A. Yes.</p> <p>11 Q. And third: The minority must be able to</p> <p>12 demonstrate that the white majority of votes</p> <p>13 sufficiently as a block to enable it usually to</p> <p>14 defeat the minority's preferred candidate.</p> <p>15 Does that sound right?</p> <p>16 A. Correct.</p> <p>17 Q. And in your view, does "usually" in the</p> <p>18 third condition mean most of the time?</p> <p>19 A. Well, I mean I wouldn't a percentage on</p> <p>20 it. I mean, you know, I think usually means</p> <p>21 usually. So if I say I usually do something, it</p> <p>22 means more often than not. I don't know if it</p> <p>23 necessarily has to be -- if there's a certain</p> <p>24 percentage threshold. But, yeah, more often than</p> <p>25 not.</p>	<p>1 high degree, such that in this case, that black</p> <p>2 voters would not be able to elect their preferred</p> <p>3 candidate because of the presence of white voters.</p> <p>4 Q. Is that the definition that you use in</p> <p>5 your reports for this case?</p> <p>6 A. I don't think I give a definition in the</p> <p>7 reports for this case.</p> <p>8 Q. Is that definition the one that you're</p> <p>9 operating under as you're analyzing the facts of</p> <p>10 this case?</p> <p>11 A. Well, in my report I don't really talk</p> <p>12 much about the determinants of racially polarized</p> <p>13 voting. I take Orey's analysis as factual. What</p> <p>14 I do in this report is argue that even if it's</p> <p>15 present, it does not lead to black preferred</p> <p>16 candidates usually losing their elections.</p> <p>17 Q. Got it. Thank you.</p> <p>18 What do you think is the purpose of</p> <p>19 assessing racially polarized voting in districting</p> <p>20 cases?</p> <p>21 MR. WALLACE: If that's asking for a</p> <p>22 legal opinion, I object to the form, but he may</p> <p>23 respond as best he can.</p> <p>24 THE WITNESS: What do you mean, what is</p> <p>25 the purpose?</p>
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<p>1 Q. Were you asked to assess any particular</p> <p>2 one of the Gingles factors for your report?</p> <p>3 A. No.</p> <p>4 Q. In paragraph 53 of your January report</p> <p>5 you say, quote: This does not support the third</p> <p>6 precondition of Thornburg versus Gingles(1986).</p> <p>7 Is that right?</p> <p>8 A. It does.</p> <p>9 MR. WALLACE: Which page is that?</p> <p>10 THE WITNESS: 15.</p> <p>11 Q. (By Mr. Cheung) Is it fair to say that</p> <p>12 your reports do not dispute the existence of</p> <p>13 Gingles' precondition one in this case?</p> <p>14 A. Correct.</p> <p>15 Q. And is it also fair to say that you do</p> <p>16 not dispute the existence of Gingles two</p> <p>17 precondition in this case?</p> <p>18 A. Remind me of what precondition two was.</p> <p>19 Q. The minority group must be able to show</p> <p>20 that it is politically cohesive.</p> <p>21 A. That's correct.</p> <p>22 Q. And what is your understanding of</p> <p>23 racially polarized voting?</p> <p>24 A. That voting is determined -- voting</p> <p>25 breaks down on racial lines to a significantly</p>	<p>1 Q. (By Mr. Cheung) Why do you think</p> <p>2 racially polarized voting is relevant in voting</p> <p>3 rights cases?</p> <p>4 MR. WALLACE: That is a legal opinion.</p> <p>5 I object to the form, and he can answer.</p> <p>6 THE WITNESS: Why is it relevant as a</p> <p>7 practical matter or as a --</p> <p>8 Q. (By Mr. Cheung) A practical matter,</p> <p>9 yeah.</p> <p>10 A. So why is racially polarized voting --</p> <p>11 well, so if you believe that individuals should</p> <p>12 have -- that elections should allow for a fair</p> <p>13 contest, the individuals have different beliefs</p> <p>14 that if you have racially polarized voting it</p> <p>15 could be a way, right, for disenfranchisement to</p> <p>16 occur among a minority group.</p> <p>17 Q. Thank you.</p> <p>18 I just have a few questions about the</p> <p>19 sources that you use in your report. Your January</p> <p>20 report has an Appendix A of election results; is</p> <p>21 that right? That's on page 44.</p> <p>22 A. I'm not seeing the Appendix A. On my</p> <p>23 January report?</p> <p>24 Q. Yes.</p> <p>25 MR. WALLACE: Page 19.</p>

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<p>1 THE WITNESS: Yes, it does.</p> <p>2 Q. (By Mr. Cheung) And what sources did</p> <p>3 you use to collect the data that you used for</p> <p>4 Appendix A?</p> <p>5 A. That's just public data from the</p> <p>6 Mississippi Secretary of State's website.</p> <p>7 Q. Nothing else?</p> <p>8 A. Well, to determine, you know, which</p> <p>9 candidates were African American, you know, I</p> <p>10 Googled and looked at, you know, news stories and</p> <p>11 other things about that.</p> <p>12 Q. And in your academic work, do you</p> <p>13 maintain any kind of database pertaining to state</p> <p>14 court elections that you may have relied on for</p> <p>15 reports here?</p> <p>16 A. I do maintain that database and it's --</p> <p>17 so I do have, like, a document with every State</p> <p>18 Supreme Court election over the past 30 years. So</p> <p>19 it's possible that I use that to identify, like,</p> <p>20 what years to look at, because elections don't</p> <p>21 occur every year in Mississippi. So that's</p> <p>22 certainly possible.</p> <p>23 Q. So I think in paragraph 6 of your</p> <p>24 January report you reference a dataset, is that</p> <p>25 dataset the one that you maintain in your academic</p>	<p>1 So I have complete data from '90 to 2016. I have</p> <p>2 partial data before 1990, but a lot of stuff is</p> <p>3 missing from it because it was so long ago. And</p> <p>4 around 2016 I started doing some administrative</p> <p>5 work. And the nature of my career has shifted,</p> <p>6 and so I haven't been as diligent on updating it</p> <p>7 since then. But I did update it for this case.</p> <p>8 So the elections post 2016 here and 2020, I went</p> <p>9 and collected that information, you know, for the</p> <p>10 purposes of this case.</p> <p>11 Q. Got it. So it would have a complete set</p> <p>12 of Mississippi Supreme Court elections starting</p> <p>13 from 1990?</p> <p>14 A. Yes.</p> <p>15 Q. What sources do you use for that</p> <p>16 dataset?</p> <p>17 A. So, variety of sources. Obviously the</p> <p>18 best source is the Secretary of State's website</p> <p>19 because it's official returns. I use newspaper</p> <p>20 articles about -- so if I can't tell if a</p> <p>21 candidate, you know, what race or gender is,</p> <p>22 newspaper articles often do that. Sometimes you</p> <p>23 can go to Judge PDO which is a website that has a</p> <p>24 bunch of facts about judges. So a variety of</p> <p>25 public information sources. Because all this data</p>
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<p>1 work?</p> <p>2 A. Yes.</p> <p>3 Q. And what kinds of information is in that</p> <p>4 dataset?</p> <p>5 A. Well, that dataset has a bunch of stuff.</p> <p>6 So, it has characteristics about the candidates.</p> <p>7 So race, gender, incumbency, non-incumbency,</p> <p>8 whether or not the candidate was originally</p> <p>9 appointed to the bench versus originally elected</p> <p>10 to the bench. It has results from primaries, has</p> <p>11 results from general elections. It has campaign</p> <p>12 spending where available, the amount of money</p> <p>13 spent and raised by individuals. It has the</p> <p>14 partisanship. So was the race was a partisan,</p> <p>15 nonpartisan race; was it a district race versus</p> <p>16 state wide race. So it basically has -- so if you</p> <p>17 look at any of my previous articles, any of those</p> <p>18 variables that are in those articles are in that</p> <p>19 dataset.</p> <p>20 Q. Yeah, I did try to make it through your</p> <p>21 articles but you have quite a few of them.</p> <p>22 A. Thank you.</p> <p>23 Q. What time period does your dataset</p> <p>24 cover?</p> <p>25 A. So most of it is from '90 to about 2016.</p>	<p>1 is public data.</p> <p>2 Q. Is the dataset itself public?</p> <p>3 A. Parts of it are. I mean, certainly I</p> <p>4 can make it so. I mean, I've -- so if you go to</p> <p>5 my data verse page, I've released datasets for all</p> <p>6 of the articles I have published, which includes</p> <p>7 both the dataset and the code book and the</p> <p>8 instructions for running, rerunning analysis for</p> <p>9 replication purposes. But I've never done</p> <p>10 anything with, like, the full data, so the whole</p> <p>11 thing is not --</p> <p>12 Q. Would you be able to provide that</p> <p>13 dataset to us?</p> <p>14 A. Of course.</p> <p>15 Q. Thank you.</p> <p>16 A. Do you want just for the Mississippi</p> <p>17 part or do you want -- you'd have to be clear</p> <p>18 about what you wanted. I can easily do that.</p> <p>19 Q. Just the Mississippi part will be fine.</p> <p>20 Thank you. I think you nodded. Is that</p> <p>21 okay?</p> <p>22 A. Yes, that is fine. Sorry.</p> <p>23 Q. Have you received any facts or sources</p> <p>24 from your attorneys in this case?</p> <p>25 A. Yes, I've been directed occasionally,</p>

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<p>1 you know, because I'm not an expert in</p> <p>2 Mississippi, generally, of something -- sometimes</p> <p>3 some leads to pursue that would not have been</p> <p>4 apparent to somebody from the outside.</p> <p>5 Q. Have you been asked to assume any fact</p> <p>6 to be true in the preparation of your reports?</p> <p>7 A. I have not.</p> <p>8 Q. In paragraph 1 of your January report,</p> <p>9 you mention having used voter registration data.</p> <p>10 Do you see that?</p> <p>11 A. In paragraph 1. So meaning the first</p> <p>12 paragraph on Page 1.</p> <p>13 Q. Yes.</p> <p>14 A. I was retained -- based on Mississippi</p> <p>15 state voter registration and election data. Yes.</p> <p>16 Q. Did you receive that voter registration</p> <p>17 data from the Secretary of State's website or some</p> <p>18 other source?</p> <p>19 A. I don't recall, but I'm pretty sure it</p> <p>20 was the Secretary of State's website. That would</p> <p>21 be usually where I would go.</p> <p>22 Q. Do you recall what you used the</p> <p>23 registration data for?</p> <p>24 A. Well, I don't know if I -- no, I don't.</p> <p>25 But if I read my report again, I probably could</p>	<p>1 A. That's a hard question to answer. Do I</p> <p>2 evaluate? So, yes, in a sense. So when I'm asked</p> <p>3 to review journal articles, my part of the job of</p> <p>4 me as a peer reviewer is to evaluate, you know, do</p> <p>5 the scholars or does the article, the submission,</p> <p>6 is it reliable, does it answer the question.</p> <p>7 When I was editor of a journal for six</p> <p>8 years part of the decisions that we made, you</p> <p>9 know, whether or not we would accept an article</p> <p>10 for publication or not was the quality of the</p> <p>11 empirical analysis, was the research design done</p> <p>12 properly, were the methods used to analyze and</p> <p>13 arrive at the conclusions the proper ones. And so</p> <p>14 in that sense, yes.</p> <p>15 Q. And so when you review articles for the</p> <p>16 reliability of the empirical analyses, what are</p> <p>17 the indicators that you tend to look at?</p> <p>18 A. So there are a couple of things. The</p> <p>19 first question is, is the design suitable to</p> <p>20 answer the question. That is, so if you want to</p> <p>21 answer a question about -- I'll give you an</p> <p>22 example -- of voters' perceptions on the economy</p> <p>23 on the likelihood of voting for the president.</p> <p>24 You've got to make sure that the data being used</p> <p>25 in the way this study is designed actually allows</p>
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<p>1 find out if I used it at all or what I used it</p> <p>2 for. But off the top, no. I probably used it</p> <p>3 for -- I don't know what I would have used it for.</p> <p>4 I would have used it -- I would have</p> <p>5 used voter data to calculate roll-off. Right?</p> <p>6 Sometimes the people who voted versus those who</p> <p>7 voted for State Supreme Court so when we look at</p> <p>8 rates. But I don't recall using the voter</p> <p>9 registration data. But I'm happy to be corrected</p> <p>10 on that.</p> <p>11 Q. I didn't see anything in your report,</p> <p>12 which is why I'm asking about it. Because you</p> <p>13 cite the data, but I don't see any actual analysis</p> <p>14 of voter registration in your reports. Does that</p> <p>15 sound right to you?</p> <p>16 A. It does, makes me gratified I'm not</p> <p>17 missing something.</p> <p>18 Q. So as best as you recall you did not</p> <p>19 performing any analysis of voter registration</p> <p>20 rates?</p> <p>21 A. That's a fair statement.</p> <p>22 Q. I have a few questions about statistical</p> <p>23 methods, generally. In your academic work, do you</p> <p>24 evaluate statistical analyses performed by other</p> <p>25 scholars?</p>	<p>1 you to answer that question.</p> <p>2 The second thing is given the</p> <p>3 distribution and nature of the data, are the</p> <p>4 techniques used appropriate. So if you have a</p> <p>5 dichotomous dependent variable, a variable where</p> <p>6 it's between zero and one, and you're using</p> <p>7 regression, that's not appropriate. That won't</p> <p>8 give you bias results. You have to use a</p> <p>9 different technique. So those kind of things.</p> <p>10 I don't go in, though, and like look at</p> <p>11 the dataset and make sure -- that's not part of</p> <p>12 the peer review thing. But it's basically, is the</p> <p>13 design suitable to answer the question and then do</p> <p>14 the results -- do the methods used to analyze the</p> <p>15 data, are they appropriate given how the data is</p> <p>16 distributed and the nature of the data.</p> <p>17 Q. And so do you look at things like</p> <p>18 whether the sample is representative?</p> <p>19 A. Sure.</p> <p>20 Q. What about sample size?</p> <p>21 A. Sure.</p> <p>22 Q. How do you determine what the requisite</p> <p>23 sample size is for reliability?</p> <p>24 A. Yeah, so that's -- I mean, that's a good</p> <p>25 question. I'm happy to talk about it. So it</p>

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<p>1 depends on the population, right, that you're</p> <p>2 trying to make inferences about. And so generally</p> <p>3 speaking for a nationwide survey or whatever,</p> <p>4 you're looking at sample size of, like, 1500 or</p> <p>5 so. It usually gives you pretty good results,</p> <p>6 within plus or minus 3 percent margin of error,</p> <p>7 assuming it's done randomly, a randomized sample.</p> <p>8 But you can't always get a randomized sample.</p> <p>9 What that means is, if you can't get a randomized</p> <p>10 sample, you have to be very careful about the</p> <p>11 inferences you're making from that sample. It</p> <p>12 doesn't mean it's useless but it does mean that</p> <p>13 your inferences are necessarily going to be more</p> <p>14 imprecise.</p> <p>15 So, you know, sample size is always --</p> <p>16 obviously more is always better to a certain</p> <p>17 point, then you get diminishable marginal returns.</p> <p>18 But those are the kind of the general things. I</p> <p>19 would not reject something because -- on the basis</p> <p>20 of the fact that they only have a sample size of,</p> <p>21 say, 500 people. It just means their estimates</p> <p>22 are going to be less precise, which means you're</p> <p>23 going to be less likely to find statistical</p> <p>24 significance because your standard hours are going</p> <p>25 to be larger. But you still actually can gain</p>	<p>1 A. Yeah.</p> <p>2 Q. What methods would you use to establish</p> <p>3 causation?</p> <p>4 A. So, there's another one. Causation is</p> <p>5 really, really hard in social sciences. Because</p> <p>6 isolating an independent fact requires</p> <p>7 manipulation of an independent variable that you</p> <p>8 can't always manipulate. So if I wanted to</p> <p>9 establish a causation between, say, gender and</p> <p>10 vote choice, I need to do that experimentally and</p> <p>11 -- so the gold standard would be to do it</p> <p>12 experimentally. But you can't randomly assign</p> <p>13 somebody gender. And so if you can't have random</p> <p>14 assignment, then you can't do a real experiment.</p> <p>15 So you can try and get at it -- there are some</p> <p>16 statistical techniques to try and get at. You</p> <p>17 know, isolating causal factors through certain</p> <p>18 designs. I tend to be skeptical of those, I</p> <p>19 think. And I don't think it's always necessary to</p> <p>20 show causality. I think when we can get causality</p> <p>21 it's great, but a lot of times causality is</p> <p>22 allusive because there are multiple causes to</p> <p>23 things.</p> <p>24 And I could show you, maybe, that gender</p> <p>25 causes vote choice, but I can't tell you how that</p>
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<p>1 some good knowledge there and you still can, you</p> <p>2 know, learn something.</p> <p>3 Q. And do you have a specific view on what</p> <p>4 a sample size should be when evaluating</p> <p>5 Mississippi elections?</p> <p>6 A. No. I mean, Mississippi is hard because</p> <p>7 you only have elections every eight years, for</p> <p>8 example, for State Supreme Court and there are</p> <p>9 only, like, nine seats. So when you're looking at</p> <p>10 eight years, basically every judge is up once a</p> <p>11 decade. And so you're always going to have a</p> <p>12 small sample size when you look within the state.</p> <p>13 The same is true for any statewide office in any</p> <p>14 state, actually.</p> <p>15 I mean, if you look at state legislative</p> <p>16 elections, okay, those are every couple of years.</p> <p>17 Right? You'll get good samples. You've got to</p> <p>18 work with the data that you've got. You can't</p> <p>19 just make up elections that don't exist.</p> <p>20 Q. And I think you mentioned earlier you</p> <p>21 would look at error size?</p> <p>22 A. Sure.</p> <p>23 Q. Competence intervals?</p> <p>24 A. Sure.</p> <p>25 Q. Statistical significance?</p>	<p>1 is relative to other causes. Because no one will</p> <p>2 argue that it's the only cause. And so</p> <p>3 experiments will allow us to isolate a cause, but</p> <p>4 not necessarily assess the relative importance of</p> <p>5 that cause relative to other things. That</p> <p>6 requires more observational data.</p> <p>7 And so saying all this to say that</p> <p>8 establishing causality when possible is</p> <p>9 allottable, it's not always possible. And just</p> <p>10 because we can't establish it doesn't mean that we</p> <p>11 can't advance knowledge.</p> <p>12 Q. So in that example you just gave, how</p> <p>13 would you demonstrate that gender is one of the</p> <p>14 factors causing voter choice?</p> <p>15 A. Well, see, I mean, it depends on what</p> <p>16 you mean by cause. There's this big debate as to</p> <p>17 whether or not you can actually use the word cause</p> <p>18 outside of an experiment, within the discipline.</p> <p>19 So you have what I would call the causal inference</p> <p>20 mafia who argue that if you don't have an</p> <p>21 experiment, you can't say anything about</p> <p>22 causation. You can have that position. It's not</p> <p>23 a majority position. It's an extreme position,</p> <p>24 but it's intellectually defensible. Or you can</p> <p>25 use observational data and try and isolate the</p>

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<p>1 effects of other factors and talk about genders'</p> <p>2 relative contribution to the vote choice. Now,</p> <p>3 does that mean it causes it, no, but, you know, if</p> <p>4 you control enough of the factors you can get to a</p> <p>5 point where -- you can establish a relationship,</p> <p>6 and then you can be pretty sure that there's</p> <p>7 something, you know, going on there. And so I</p> <p>8 think that sometimes is the best we can do. If</p> <p>9 that makes sense.</p> <p>10 Q. Yes, thank you.</p> <p>11 I have a few questions about incumbency.</p> <p>12 A. Sure.</p> <p>13 Q. In your academic work, I think you've</p> <p>14 studied the effect of incumbency on judicial</p> <p>15 elections and election outcomes?</p> <p>16 A. Correct.</p> <p>17 Q. What advantages are generally associated</p> <p>18 with incumbency?</p> <p>19 A. In judicial elections specifically or in</p> <p>20 elections generally?</p> <p>21 Q. Let's talk generally and then judicial.</p> <p>22 A. So generally incumbents have an</p> <p>23 advantage for several reasons. One is they have</p> <p>24 an established fundraising network. One is they</p> <p>25 have increased name recognition. One is they can</p>	<p>1 majority opinion or you get overruled by the US</p> <p>2 Supreme Court, other things that will get the</p> <p>3 public's attention. And in some states they'll</p> <p>4 actually put whether you're an incumbent on the</p> <p>5 ballot. And so when voters go into the ballot</p> <p>6 booth it will say your name, and the next one will</p> <p>7 be, like, incumbent or current judge. In other</p> <p>8 states they don't. So that could potentially</p> <p>9 signal to individuals, you know, which one is the</p> <p>10 incumbent and give them an advantage.</p> <p>11 Q. Is there an advantage to being able to</p> <p>12 rely on prior experience on the job?</p> <p>13 A. Yes, so -- but that's not unique to</p> <p>14 incumbents, right? So in one of my articles we</p> <p>15 showed that voter -- so if you're a lower court</p> <p>16 judge running for the State Supreme Court, you</p> <p>17 have an advantage over a candidate who has never</p> <p>18 been a judge. And so there's no necessarily</p> <p>19 increase by the fact that it's an incumbent, but</p> <p>20 rather you'll do better with any kind of prior</p> <p>21 judicial experience.</p> <p>22 Q. Is there some kind of inherent appeal to</p> <p>23 being an incumbent?</p> <p>24 A. What do you mean by "inherent appeal"?</p> <p>25 Q. Some comfort that voters might have that</p>
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<p>1 call a press conference or send mail, write to</p> <p>2 their constituents to get their names out there</p> <p>3 about policy positions they're doing or they can</p> <p>4 position take. They have all kinds of perks like</p> <p>5 that about --</p> <p>6 And so for the incumbents there tends to</p> <p>7 be -- you know, it's one of those paradoxes,</p> <p>8 right, that everybody hates Congress but everyone</p> <p>9 loves their congressperson. You see a</p> <p>10 congressional reelection rate of 95 percent and</p> <p>11 Congress's approval rating is, what, 19 or 18, and</p> <p>12 honestly, that seems a bit high to me.</p> <p>13 Now, in the State Supreme Court case the</p> <p>14 incumbency advantage can improve a couple of</p> <p>15 different ways. One is, again, you have an</p> <p>16 established network, you've run statewide before,</p> <p>17 presumably, or district-wide before. And because</p> <p>18 of that you've got name recognition and you've run</p> <p>19 a campaign. So you already have some donors lined</p> <p>20 up, you already are able to tap into those funds.</p> <p>21 While you can't, you know, call press conferences</p> <p>22 and talk about how you'll decide on a case, you</p> <p>23 can get your name out there by certain positions</p> <p>24 you take. For example, if you write a themed</p> <p>25 decent in a case or something like that or</p>	<p>1 they're already doing the job, for example?</p> <p>2 A. Sure.</p> <p>3 MR. WALLACE: You mean lawyers might</p> <p>4 have or voters might have?</p> <p>5 MR. CHEUNG: Voters.</p> <p>6 MR. WALLACE: I thought you said</p> <p>7 lawyers. Did I hear it wrong? I'm sorry.</p> <p>8 THE WITNESS: Yes, assuming the voters</p> <p>9 approve of the incumbent.</p> <p>10 Q. (By Mr. Cheung) So I know we were</p> <p>11 talking about, first, incumbency generally and</p> <p>12 then judicial candidates. What about Mississippi</p> <p>13 Supreme Court candidates. What advantages do you</p> <p>14 see in being an incumbent on the Mississippi</p> <p>15 Supreme Court?</p> <p>16 A. I don't see any differences on the</p> <p>17 Mississippi Supreme Court compared to other</p> <p>18 courts. I have no reason to think that incumbency</p> <p>19 functions different here than it does otherwise.</p> <p>20 Q. And generally it seems you're saying</p> <p>21 incumbents are more likely to prevail compared to</p> <p>22 challengers?</p> <p>23 A. Correct, that's a fact.</p> <p>24 Q. Have you done any empirical analysis to</p> <p>25 determine the likelihood of judicial incumbents to</p>

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<p>1 get reelected?</p> <p>2 A. I have.</p> <p>3 Q. How strong is incumbency in judicial</p> <p>4 elections?</p> <p>5 A. So I think the last time I looked at</p> <p>6 that was probably 15 years ago. So 15 years</p> <p>7 ago-ish, if my memory is correct, the incumbent --</p> <p>8 about 85 percent of State Supreme Court incumbents</p> <p>9 won reelection compared to 80 percent of</p> <p>10 governors, 87 percent of US senators, and like 94</p> <p>11 percent of US House of Representatives. I'm</p> <p>12 pretty sure those are the numbers. It's in my</p> <p>13 2005 article in American Politics Research. Since</p> <p>14 then, just, you know, eyeballing the data, those</p> <p>15 trends seem to be the same in State Supreme Court</p> <p>16 races that incumbents overwhelmingly win.</p> <p>17 Q. That 2005 article, is that entitled</p> <p>18 Electoral Verdicts Incumbent Defeats at State</p> <p>19 Supreme Court Elections?</p> <p>20 A. That's the one.</p> <p>21 Q. I think I pulled a sentence from there</p> <p>22 where you say: Incumbents in partisan district</p> <p>23 state election have 55.6 chance of defeat compared</p> <p>24 to 7.2 percent chance in a nonpartisan district</p> <p>25 state.</p>	<p>1 A. Yeah, I think there were two. I think</p> <p>2 there was a chief justice in 2008 and -- well, I</p> <p>3 can tell you from Table 1. So since 2000 the only</p> <p>4 loser, right, was Smith in 2008 in this district</p> <p>5 here.</p> <p>6 Q. Thank you.</p> <p>7 We've touched on this before, but, you</p> <p>8 know, based on the prior academic work you've</p> <p>9 done, do you believe that Mississippi system for</p> <p>10 electing Supreme Court Justice creates an</p> <p>11 incumbency advantage?</p> <p>12 A. Do I believe that creates incumbency?</p> <p>13 No, I believe there is an incumbency advantage in</p> <p>14 these elections just like any other elections.</p> <p>15 Q. Do you think that incumbency is a strong</p> <p>16 advantage for candidates running for Mississippi</p> <p>17 Supreme Court?</p> <p>18 A. Yes.</p> <p>19 Q. In the history of Mississippi, do you</p> <p>20 know if any black candidate has been able to get</p> <p>21 elected to the Mississippi Supreme Court without</p> <p>22 an incumbency advantage?</p> <p>23 A. Without an incumbency advantage, I do</p> <p>24 not know the answer to that question.</p> <p>25 Q. But you're not aware of any black</p>
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<p>1 Does that sound right?</p> <p>2 A. That does. What I would caution you</p> <p>3 there is those aren't artifact or virtue</p> <p>4 elections. So who are the states that are</p> <p>5 partisan district states? Louisiana and Illinois,</p> <p>6 that's it. And in nonpartisan district states</p> <p>7 you've got Kentucky and Mississippi. So you don't</p> <p>8 have a lot of states, right? So those numbers --</p> <p>9 it's a one defeat where I can throw out the</p> <p>10 predictive probabilities significantly, right,</p> <p>11 when you have a small number of cases.</p> <p>12 Q. And so you're saying that the sample of</p> <p>13 nonpartisan district states consists only of</p> <p>14 Kentucky and Mississippi; is that right?</p> <p>15 A. Of contested -- let me make sure.</p> <p>16 Because Louisiana is partisan. Who else -- those</p> <p>17 are the only ones that have districts. That is</p> <p>18 correct.</p> <p>19 Q. Based on the data that you do have, you</p> <p>20 would say that Mississippi judicial incumbents</p> <p>21 almost never lose?</p> <p>22 A. That's right. I think if you look over</p> <p>23 the past 20 years there are two that have lost to</p> <p>24 the Mississippi Supreme Court.</p> <p>25 Q. If that's your recollection.</p>	<p>1 candidate who has been able to win without being</p> <p>2 an incumbent?</p> <p>3 A. Again, I don't have any recollection.</p> <p>4 So if you tell me yes, then I would believe you.</p> <p>5 If you tell me no, I would believe you. I don't</p> <p>6 know.</p> <p>7 Q. Do you know if any white candidates have</p> <p>8 been able to get elected to the Mississippi</p> <p>9 Supreme Court without being an incumbent first?</p> <p>10 A. Well, I do know at least Jim Kitchens</p> <p>11 because I just told you he defeated Smith in 2008.</p> <p>12 Q. Anyone else?</p> <p>13 A. I think that's the last incumbent who</p> <p>14 was defeated, at least in this district. Yeah,</p> <p>15 that was the last incumbent who was defeated. So</p> <p>16 one time in 20 years.</p> <p>17 Q. What about open seat elections?</p> <p>18 A. In District One, I don't see any open</p> <p>19 seat elections.</p> <p>20 Q. Mississippi Supreme Court, generally?</p> <p>21 A. I only looked at District One for this</p> <p>22 case.</p> <p>23 Q. I'd like to point you to paragraph 18 of</p> <p>24 your January report.</p> <p>25 A. Yes.</p>

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<p>1 Q. I think it's the third sentence where</p> <p>2 you say: Currently, six of the nine justices on</p> <p>3 the Mississippi Supreme Court obtained their</p> <p>4 position by gubernatorial appointment.</p> <p>5 A. Correct.</p> <p>6 Q. Would that mean that the remaining three</p> <p>7 first ascended to the bench through election?</p> <p>8 A. Through open seat elections, that</p> <p>9 would -- yes, that would be a reasonable</p> <p>10 conclusion.</p> <p>11 Q. And those three would consist of Jim</p> <p>12 Kitchens, Josiah Coleman and Robert Chamberlain?</p> <p>13 MR. WALLACE: Objection, assumes facts</p> <p>14 not in evidence. You say Jim Kitchens got on with</p> <p>15 an open seat election?</p> <p>16 MR. CHEUNG: Without a prior</p> <p>17 appointment.</p> <p>18 MR. WALLACE: Okay. That's a different</p> <p>19 thing. That's why I objected.</p> <p>20 Q. (By Mr. Cheung) I can rephrase. So the</p> <p>21 three justices that obtained their position on</p> <p>22 Mississippi Supreme Court without a prior</p> <p>23 appointment to the Court would be Jim Kitchens,</p> <p>24 Josiah Coleman and Robert Chamberlain. Does that</p> <p>25 sound right?</p>	<p>1 think the further back in time we go, you know, if</p> <p>2 the demographics of the districts have changed</p> <p>3 since '92 and '96, right, it may be a completely</p> <p>4 different electorate. I don't know what the</p> <p>5 population of the district was in terms of racial</p> <p>6 breakdown before then. I don't know how many</p> <p>7 African American candidates ran for open seats.</p> <p>8 And so it could be that only white candidates have</p> <p>9 won open seats because African American candidates</p> <p>10 have not run in these open seats. And certainly</p> <p>11 there haven't been a lot of open seats, right. So</p> <p>12 we're talking about three seats since 1994. There</p> <p>13 are a whole host of things, right. So it tells</p> <p>14 me, I mean, I'd want to know more. But it</p> <p>15 wouldn't cause me to make any kind of firm</p> <p>16 conclusion on the basis of those numbers.</p> <p>17 Q. So understanding that there are several</p> <p>18 possible conclusions that you could draw from this</p> <p>19 fact, would one reasonable suggestion be that</p> <p>20 white candidates are able to win without</p> <p>21 incumbency advantage, does that suggest that</p> <p>22 they're generally in a stronger position than</p> <p>23 black candidates?</p> <p>24 A. I think it depends. Because if you look</p> <p>25 at like the Jim Kitchens race, my understanding</p>
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<p>1 A. That sounds right. And only Kitchens is</p> <p>2 with District One, if I remember correctly.</p> <p>3 Q. Do you know of any other justices who</p> <p>4 won election to the Mississippi Supreme Court</p> <p>5 without prior appointment?</p> <p>6 A. Do I know of any other justices? Not</p> <p>7 that I can recall off the top of my head. It's</p> <p>8 certainly possible in other districts. But,</p> <p>9 again, I am limiting my analysis to District One.</p> <p>10 Q. In terms of District One, does it sound</p> <p>11 right that Chief Justice James Smith was elected</p> <p>12 in 1992 without prior appointment?</p> <p>13 A. In '92. So would be '92, eight-year</p> <p>14 term -- yes, that sounds like it could be right.</p> <p>15 Q. And William Waller was elected in '96 in</p> <p>16 District One without prior appointment?</p> <p>17 A. It's possible, sure.</p> <p>18 Q. So assuming that's right, does the fact</p> <p>19 that only white candidates have been able to win</p> <p>20 elections without first being an incumbent tell</p> <p>21 you anything about the overall ability of black</p> <p>22 candidates to get elected to Mississippi Supreme</p> <p>23 Court?</p> <p>24 A. Well, it tells me a couple of things. I</p> <p>25 mean, I'd want to do some more research. I do</p>	<p>1 for whatever it is, is he was endorsed by Benny</p> <p>2 Thompson and so he was actually the black</p> <p>3 preferred candidate in that race. And he defeated</p> <p>4 another white candidate. And I don't know the</p> <p>5 specifics of the Waller case or anything else.</p> <p>6 If those white candidates were actually</p> <p>7 preferred by black voters, then that would tell me</p> <p>8 something different than if that candidate was not</p> <p>9 preferred. So at this point I don't have enough</p> <p>10 information.</p> <p>11 Q. Yeah. I understand that there's a</p> <p>12 distinction between black candidates and black</p> <p>13 preferred candidates because the two are not</p> <p>14 necessarily the same. But looking exclusively at</p> <p>15 the ability of black candidates to get elected to</p> <p>16 the Mississippi Supreme Court, is it a</p> <p>17 reasonable -- is it one of the reasonable</p> <p>18 explanations to say that black candidates</p> <p>19 typically need incumbency advantage, while white</p> <p>20 candidates do not, to get elected to Mississippi</p> <p>21 Supreme Court?</p> <p>22 A. I wouldn't say typically. I would say</p> <p>23 that that's possible. I would want to how many</p> <p>24 black candidates ran for those open seats and</p> <p>25 everything before I concluded. If all we have is</p>

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<p>1 white candidates running for a seat, then we don't</p> <p>2 know if blacks can win without incumbency. So,</p> <p>3 it's possible. Again, I think we would need to</p> <p>4 learn more.</p> <p>5 Q. Okay. And if it's a fact that very few</p> <p>6 black candidates even run for these seats, what</p> <p>7 could be some explanations for that?</p> <p>8 A. Well, there's several explanations about</p> <p>9 why. One might be they don't think they could</p> <p>10 one. One might be, you know, they're not</p> <p>11 interested. One might be that the incumbent</p> <p>12 already is doing a good job and so they feel like</p> <p>13 there's no need to try and unseat an incumbent.</p> <p>14 So there are a number of reasons why a</p> <p>15 candidate may decide. It may be the wrong time in</p> <p>16 their life. They may have serious headwinds,</p> <p>17 right? If you are a candidate running in a</p> <p>18 presidential election here and you're a Democrat,</p> <p>19 it's probably not a good time to run here in</p> <p>20 Mississippi. So there are a lot of factors, race</p> <p>21 being one of them. But party and incumbent size</p> <p>22 (inaudible) and everything else would also be</p> <p>23 factors.</p> <p>24 Q. I have a few questions about your work</p> <p>25 around the design of judicial election and</p>	<p>1 Supreme Court has decided, eh, we're not going to</p> <p>2 really do that anymore.</p> <p>3 Elections allow for voters to</p> <p>4 participate and for voters to have a hand in how</p> <p>5 the law is interpreted in their states. And so</p> <p>6 giving the voters a choice increases political</p> <p>7 efficacy, increases the legitimacy of the</p> <p>8 institution, and it allows voters to have a direct</p> <p>9 say in the people who are making decisions that</p> <p>10 affect the legal life in the state.</p> <p>11 So there are problems as well and no</p> <p>12 system is perfect. But it's not clear to me</p> <p>13 that -- I mean, the debate has tended to be that</p> <p>14 elections are just these awful things. And it's</p> <p>15 not clear to me from the data that that's the</p> <p>16 case. That in fact voters do know what they're</p> <p>17 doing, they do participate meaningfully, and they</p> <p>18 are able to make choices. And so this seems like</p> <p>19 an option that a state could want to have.</p> <p>20 I mean, if I were a design institution I</p> <p>21 would not design what y'all have here. I think</p> <p>22 nonpartisan elections are awful, right? But I</p> <p>23 don't live here. So y'all want to do that, go</p> <p>24 ahead.</p> <p>25 Q. Why are nonpartisan elections awful?</p>
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<p>1 election systems.</p> <p>2 A. Sure.</p> <p>3 Q. In your work have you studied advantages</p> <p>4 of electing versus appointing judges?</p> <p>5 A. Well, there's no way to quantify -- yes,</p> <p>6 I have spoken about the relative advantages of</p> <p>7 elections versus appointments.</p> <p>8 Q. And what are those relative advantages?</p> <p>9 A. So you start with the presumption that</p> <p>10 there is no perfect system, right? And so when</p> <p>11 you're designing institutions, there are a number</p> <p>12 of considerations to balance, one of them being</p> <p>13 accountability versus independence, right? So you</p> <p>14 could design a system like the US federal system</p> <p>15 where judges are maximally independent, right?</p> <p>16 And for everyone who thinks judges should be</p> <p>17 independent, I ask them how that's going because</p> <p>18 it doesn't seem to be going too well.</p> <p>19 So there are advantages to being</p> <p>20 independent, right? But being too independent,</p> <p>21 actually, is bad because it means you can do</p> <p>22 whatever the hell you want and you're not</p> <p>23 constrained by the law or by anything else. And</p> <p>24 we can give all kind of examples from both sides</p> <p>25 of the political aisle of the times, well, the US</p>	<p>1 A. Because they're ineffective. They're</p> <p>2 removing a meaningful queue from the voters. And</p> <p>3 so what you're doing is your unnecessarily shaving</p> <p>4 off voter participation. And so nonpartisan</p> <p>5 elections you have people roll off because they</p> <p>6 don't feel informed, right? And we know that</p> <p>7 Democratic judges view the law differently than</p> <p>8 Republican judges. Lawyers know this, right? You</p> <p>9 go in a courtroom, you know you're either happy or</p> <p>10 you're, like, this is going to be a tough one. We</p> <p>11 know at the US Supreme Court level, we can predict</p> <p>12 outcomes of cases really well. Why would we tell</p> <p>13 voters they can't have that information? It seems</p> <p>14 silly.</p> <p>15 Q. I can't confirm the reaction I have</p> <p>16 walking into court, but...</p> <p>17 A. No. This is the big difference between</p> <p>18 political scientists and lawyers, right? I can</p> <p>19 say these things.</p> <p>20 Q. When you say remove a meaningful queue,</p> <p>21 are you referring to the partisan designation on</p> <p>22 the ballot?</p> <p>23 A. I am.</p> <p>24 Q. And you say voters do participate</p> <p>25 meaningfully in judicial elections?</p>

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<p>1 A. Yes.</p> <p>2 Q. What do you mean by that?</p> <p>3 A. Some people think voters don't know what</p> <p>4 they're doing. Voters know enough. So for</p> <p>5 example, voters, you know, can tell that they're</p> <p>6 seeing a quality challenger, right, one with prior</p> <p>7 judicial experience and one without. So if a</p> <p>8 challenger between incumbent has prior judicial</p> <p>9 experience, they do about five points better than</p> <p>10 challengers without such experience.</p> <p>11 If you take party ID out and you -- so</p> <p>12 we did some experiments on this where we, you</p> <p>13 know, manipulated whether or not party ID was</p> <p>14 shown or not. I'm going to get the numbers here a</p> <p>15 little bit, not precise. But in partisan races,</p> <p>16 like Republicans went for the Republican candidate</p> <p>17 that we told was the Republican 94 percent of the</p> <p>18 time, and Democrats voted for the Democrat</p> <p>19 candidate, like, 85 percent of the time. In that</p> <p>20 scenario where we removed party ID by the same</p> <p>21 descriptions of real ads that candidates have run,</p> <p>22 what happens is Republicans voted for Republicans</p> <p>23 70 percent of the time and Democrats were about</p> <p>24 65. So you would expect without party ID those</p> <p>25 things should be close to 50/50. That is, if</p>	<p>1 officeholders are to the voters?</p> <p>2 A. No, without efficacy is referring to how</p> <p>3 legitimate the voters feel the court is and how</p> <p>4 much trust they have in the court. And so Jim</p> <p>5 Gibson did a series of studies looking at dual</p> <p>6 elections in (inaudible) legitimacy of the court.</p> <p>7 And what he found is actually, you know, there are</p> <p>8 some costs to contested elections, but there are</p> <p>9 also a lot of benefits. When you look at the</p> <p>10 whole cost benefit thing, it actually turns out</p> <p>11 that elections are legitimacy enhancing. That is,</p> <p>12 voters feel more positive about courts on average</p> <p>13 after elections than they do in the absence of</p> <p>14 elections. Again, it's not no say it's all</p> <p>15 positives, but the positives outweigh the</p> <p>16 negatives.</p> <p>17 Q. But is responsiveness to voters, one of</p> <p>18 the values that you think should be promoted by</p> <p>19 judicial elections?</p> <p>20 A. Well, responsiveness is hard. Because</p> <p>21 what does that mean, responsiveness. And I want</p> <p>22 to distinguish responsiveness from accountability.</p> <p>23 Accountability means that, you know, voters will</p> <p>24 decide, you know, when a judge is up for election</p> <p>25 if that judge should be returned to office. And</p>
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<p>1 party ID wasn't meaningful, if candidates were</p> <p>2 running these ads, right, and there was no</p> <p>3 partisanship to them and voters couldn't tell,</p> <p>4 Republicans shouldn't be able to identify the</p> <p>5 Republican candidate about 70 percent of the time.</p> <p>6 So what does a nonpartisan election do?</p> <p>7 It increases errors, right? It increases the fact</p> <p>8 that Republicans would actually vote for the</p> <p>9 non-republican even though if you gave them party</p> <p>10 ID they would vote for the Republican, right?</p> <p>11 It's what the manipulation allowed us to do. And</p> <p>12 so you have fewer voters participating, and the</p> <p>13 ones who do participate make more errors, that is</p> <p>14 they vote for the candidate who they don't intend</p> <p>15 to vote for. Who they wouldn't vote for if they</p> <p>16 had the party ID. That seems like not a good way</p> <p>17 to have elections. But that's, you know, again,</p> <p>18 not my state.</p> <p>19 Q. So those percentages you just cited, I</p> <p>20 don't think they're in your report.</p> <p>21 A. That's my book. The Voters' Verdicts</p> <p>22 Book, 2015. I think it's chapter 4 or 5</p> <p>23 something.</p> <p>24 Q. Okay. And you also mentioned efficacy</p> <p>25 earlier. Is that referring to how responsive the</p>	<p>1 overwhelmingly the answer is yes.</p> <p>2 Responsiveness implies that outside of</p> <p>3 that, that judges should be like, you know,</p> <p>4 figuring out what the public wants in terms of</p> <p>5 decisions. And that kind of more, like, constant</p> <p>6 update or constant evaluation, I think one can</p> <p>7 argue is not a part of courts. I think one could</p> <p>8 argue it could be. I don't take position on that.</p> <p>9 That's outside -- I stick to the empirical data</p> <p>10 and I really don't have anything to -- yeah.</p> <p>11 Q. Got it.</p> <p>12 So you mentioned that you wouldn't do</p> <p>13 things the way that things are done in</p> <p>14 Mississippi. Is that purely referring to the</p> <p>15 nonpartisan valence of these elections or is there</p> <p>16 something else?</p> <p>17 A. I think there are -- again, if I were</p> <p>18 designing an ideal system, would I have districts,</p> <p>19 I would not, at least not this way. Because I</p> <p>20 think the Supreme Court deals with all</p> <p>21 Mississippians and all Mississippians should have</p> <p>22 a chance to vote on the Supreme Court, as opposed</p> <p>23 to carving it up into districts.</p> <p>24 You know, I think -- so I would do that.</p> <p>25 I think the terms of office are good. I might,</p>

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<p>1 for example, in an ideal situation not allow for 2 reelection. I might allow for a single term but 3 not reelection. So if you're worried about the 4 corrupting effects of donors and everything else, 5 one way to do that, right, is not allow judges to 6 run for reelection. I'd probably publicly finance 7 elections. Again, if you want to get rid of the 8 stink of private contributions, go to public 9 financing. So there are things like that that I 10 think, you know, are -- no one does it that way. 11 So really, a hypothetical exercise. You 12 know, if Mississippi wants, you know, my advice on 13 that. 14 Q. When you say, you know, you would prefer 15 no districts or at least not this way, what do you 16 mean? 17 A. I think that districts for statewide 18 offices to -- so if you live in any district, you 19 can only vote for one-third of the justices on the 20 Mississippi Supreme Court. I think that's a 21 problem. But that's just my -- I mean, you know, 22 Kentucky has districts. Illinois has districts. 23 Of course, Illinois, Chicago has three of the 24 seven and the other four split down state. That's 25 problematic.</p>	<p>1 up down state. Even though that's still not 2 exactly with population because Chicago is more 3 than three-sevenths of the population of Illinois. 4 So they're still outweighed. It gives them a 5 little bit of a bonus but not as much as it 6 should. 7 You could do what Mississippi does and 8 have basically three districts and have three from 9 each. I don't have any opinion as to which is, 10 you know, better or worse. You know, that's -- I 11 haven't seen any anything -- I haven't seen any 12 research that's looked at the effects of those 13 different kinds of district elections on outcomes 14 or on -- I mean, you can't really look at 15 incumbency anywhere else because everything is 16 unique. You have one case of this, one case of 17 that, one case of this. 18 Louisiana has partisan elections in 19 districts. Kentucky, which does it the same, 20 right, but they're nonpartisan. So every case is 21 unique. And so it's hard to make any kind of 22 comparisons about across states because you have 23 no variation. 24 Q. What do you think are the consequences 25 of having three judges coming from a single</p>
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<p>1 In general, I think that having 2 district-based elections for statewide offices is 3 suboptimal. But, again, that's just from a purely 4 theoretical design standpoint. 5 My local school board elects regions, 6 right? We have nine members of the school board, 7 and there were three people from each region. 8 Which means when I vote for people for my school 9 board, I can't vote for two-thirds of them. Well, 10 if the other two regions are nuts, and they are, 11 like I can only ever hope to have a third of 12 reasonable common sense, you know, pro-teacher 13 school board members. So, again, that's a -- I 14 think most political scientists would agree that 15 from a design perspective it's suboptimal. 16 Q. But if you were to use districts, what 17 district design would you have? 18 A. There are a number of different ways. I 19 have no opinions as to which way is better. You 20 could carve it out into nine independent districts 21 and each district elects one. That's the Kentucky 22 model. You could do what Illinois does and 23 concentrate, like, based on population, not 24 necessarily geography. So Chicago gets three, or 25 Cook County gets three, and the others are split</p>	<p>1 district as opposed to nine districts with nine 2 judges? 3 A. It could be nothing. I don't know. I 4 don't think anyone knows. 5 Q. So in terms of the benefits of electing 6 judges, we talked about earlier, I think you 7 mentioned transparency, legitimacy, 8 accountability. Is that right? 9 A. Yes. 10 Q. Would those values be better served by 11 competitive elections versus noncompetitive 12 elections? 13 A. Yes. 14 Q. Which one would better serve? 15 A. Competitive elections. 16 Q. Why is that? 17 A. Competitive elections allow for 18 meaningful choice. Competitive elections allow 19 voters to actually, you know -- when you have 20 competitive elections it shows that candidates 21 have to be more accountable. They have to be more 22 aware. If you're never worried about losing, then 23 you're basically independent, right, and there's 24 no accountability mechanism. So in general 25 elections, right, to serve their functions should</p>

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<p>1 be contested and competitive.</p> <p>2 Q. Does the competitiveness of a district</p> <p>3 affect how responsive an officeholder is to their</p> <p>4 constituents?</p> <p>5 MR. WALLACE: You're talking about</p> <p>6 judicial officeholders or generally? Object to</p> <p>7 the form for that reason.</p> <p>8 Q. (By Mr. Cheung) I would say generally</p> <p>9 and then judicially.</p> <p>10 A. Generally, absolutely. There's a lot of</p> <p>11 evidence of that. In fact, you can see it now.</p> <p>12 Why has the US Congress gone off the rails? Well,</p> <p>13 you've seen a decline of competitive elections.</p> <p>14 You know, there's no one in the middle anymore.</p> <p>15 And so you've got people who don't have to worry</p> <p>16 about actually being defeated. They're more</p> <p>17 worried about being defeated in the primary than</p> <p>18 in general election.</p> <p>19 So when you have an increase in one</p> <p>20 party districts, it leads to increased</p> <p>21 polarization.</p> <p>22 In judicial elections, I don't know of</p> <p>23 any evidence one way or the other. I do -- so it</p> <p>24 is true that there have been some studies in the</p> <p>25 early '90s to show that judges change their</p>	<p>1 or electoral threats does influence State Supreme</p> <p>2 Court Justices' decision making?</p> <p>3 A. I think it should. Whether it does or</p> <p>4 not, right, I think is -- I think there's some</p> <p>5 evidence that it does. How strong that is and has</p> <p>6 it changed over time, I don't know. But yeah.</p> <p>7 Q. Thank you.</p> <p>8 Do you think it's important for the</p> <p>9 judiciary to reflect the racial diversity of the</p> <p>10 jurisdiction?</p> <p>11 A. So what do you mean by "important"?</p> <p>12 Q. Generally in terms of the values we just</p> <p>13 discussed.</p> <p>14 MR. WALLACE: And I'll object to the</p> <p>15 form until you define "reflect".</p> <p>16 THE WITNESS: So I'll answer. I think</p> <p>17 in a representative democracy it is better for our</p> <p>18 institutions to reflect the makeup of their</p> <p>19 constituents. So I think we have evidence that,</p> <p>20 you know, if you're looking at how legitimate</p> <p>21 individuals feel their government is, if you look</p> <p>22 at how perceptions in terms of role models and</p> <p>23 everything else, it absolutely is.</p> <p>24 Like, for example, we know that, you</p> <p>25 know, when African American students come to a</p>
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<p>1 behavior as they approached an election, right?</p> <p>2 So (inaudible) and Melinda Gann Hall did</p> <p>3 a series of studies looking at how judges vote on</p> <p>4 death penalty cases as an election approach. What</p> <p>5 she found is that judges were more likely to</p> <p>6 uphold death sentences as they approached their</p> <p>7 reelection than otherwise. But that -- what that</p> <p>8 interpretation is, right, matters. Is it that</p> <p>9 judges are panning to elector or does it mean that</p> <p>10 in fact, you know, they weren't doing their job</p> <p>11 all along and this is finally reigning them in.</p> <p>12 So we do have some evidence of that, but that</p> <p>13 doesn't say anything about partisanship, doesn't</p> <p>14 say anything about districts. It's the presence</p> <p>15 of elections more generally.</p> <p>16 Q. Thank you.</p> <p>17 I'd like to point you to the 2005</p> <p>18 article we talked about earlier entitled Electoral</p> <p>19 Verdicts. I think you have a quote there that</p> <p>20 says: The more serious the electoral threat, the</p> <p>21 more constraints you will feel. The same should</p> <p>22 hold true for State Supreme Court incumbents.</p> <p>23 Does that sound right?</p> <p>24 A. It does.</p> <p>25 Q. So is it your view that competitiveness</p>	<p>1 university and see all white professors, right,</p> <p>2 that doesn't send a signal that that path is open.</p> <p>3 So yes, I do. I think descriptive representation</p> <p>4 is incredibly important. I also think substantive</p> <p>5 representation is important as well.</p> <p>6 I would submit that people who are</p> <p>7 concerned with issues of race and social justice</p> <p>8 would be better off with a liberal justice on the</p> <p>9 US Supreme Court compared to Clarence Thomas.</p> <p>10 That's not to minimize the descriptive importance</p> <p>11 of Clarence Thomas on there, but he's also not</p> <p>12 advancing the policy goals that one would think he</p> <p>13 would advance.</p> <p>14 But yes, descriptive representation is</p> <p>15 important.</p> <p>16 Q. (By Mr. Cheung) Thank you. So we</p> <p>17 talked before about how the difference between</p> <p>18 nonpartisan and partisan judicial elections is the</p> <p>19 designation of a party on a ballot. Is that</p> <p>20 right?</p> <p>21 A. It is.</p> <p>22 Q. Are there any other differences in terms</p> <p>23 of how the elections are run between partisan and</p> <p>24 nonpartisan elections?</p> <p>25 A. Well, in terms of how they are run -- so</p>

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<p>1 we have -- there are nonpartisan elections and 2 then there are partisan elections. So partisan 3 elections are pretty consistent. The party ID is 4 on the ballot, you know what they are. 5 Nonpartisan elections oftentimes are coded, right, 6 in a sense that you can tell which candidate is 7 which. And I'll point you to my 2015 book which 8 showed that, in fact, even when you remove the 9 party ID from the ballot and you just show voters 10 ads that are run, like, real ads, they can tell 11 which candidate is a Democrat and which candidate 12 is a Republican. And so nonpartisan elections do 13 not remove partisan considerations from the 14 voters' minds. In fact, in some ways they're just 15 as partisan. Again, with more errors and lower 16 voter participation. 17 Q. So those ads that you talked about, how 18 do you know if the voter is picking up on a 19 partisan queue as opposed to a policy queue or a 20 race queue or some other queue? 21 A. Well, it wouldn't be a race queue. I 22 mean there was nothing in there about race. These 23 were vignettes that we gave -- we give them to 24 people not in the state they were in. It 25 wasn't -- there was no way for voters to look up</p>	<p>1 two are that, one, fewer voters participate so you 2 have higher ballot roll-off. People don't vote 3 for those elections. They leave it blank. And 4 the other is they tend to make more mistakes. So 5 those who do vote, most of them are still able to 6 identify their co-partisan, the partisan. Because 7 most candidates who are running in these 8 nonpartisan elections are clearly endorsed by a 9 party, and that's pretty clear from their ads and 10 everything else, also the things they say. But 11 you'll have some low information voters who don't 12 get those queues and who still participate and 13 they vote what I would term incorrectly. 14 Incorrectly in the sense that they're voting 15 against the candidate that best reflects their 16 values and their interest. 17 Q. They're not voting for the candidates 18 that they would have vote for if they had full 19 information? 20 A. That is correct. 21 Q. Do you know if nonpartisan elections are 22 more or less likely to be contested? 23 A. Nonpartisan -- let me think, 24 historically. Historically I think nonpartisan 25 elections were more likely to be uncontested, but</p>
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<p>1 or whatever else. 2 Because the only difference is the 3 partisan. Everything else is the same. And so if 4 I give you a paragraph and Mike a paragraph, and 5 everything in that paragraph is the same, except 6 in yours I say it's a Republican and in Mike's I 7 say nothing, and there's a difference, well, 8 that's why there's a difference. That's what the 9 experiment does. It controls everything else. So 10 if it was a policy, you're both responding to that 11 queue. And so when you see these kinds of 12 differences, right, it's because of the 13 experimental manipulation. It really allows us to 14 get a handle on what is going on. 15 Q. I see. And so I think I understand 16 better now. That study was based on ads that you 17 created and not real-world ads? 18 A. Correct, yes. 19 Q. And so your study did not look at the 20 effect of the race on voter behavior? 21 A. Correct. 22 Q. What are some of the differences, if 23 any, in terms of voter behavior in nonpartisan 24 elections versus partisan elections? 25 A. I think we've talked about them. The</p>	<p>1 that difference has gone away in recent years. 2 Now every seat is contested just about. I mean, 3 on average. 4 Q. In paragraph 10 of your January report 5 you say that: Elections in nonpartisan states are 6 less likely to be contested than elections in 7 partisan states. 8 A. Correct. 9 Q. Is that still your position? 10 A. Well, that's my position in those 11 articles which are older. My looking at recent 12 elections, you know, just my off the top 13 recollection is that that difference has shrunk if 14 not disappeared entirely. My recollection, I 15 could be wrong. It certainly was true at the time 16 those articles were written looking at older 17 elections. But in the past decade we've seen a 18 huge increase in both attention to and 19 contentiousness of State Supreme Court elections. 20 Q. So the increased contestation, do you 21 know if that applies to Mississippi? 22 A. It applies certainly to District One 23 based on Table 1, right, where every race was, in 24 fact, contested except for Justice Kent. 25 Q. Do you know if the incumbency advantage</p>

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<p>1 is stronger or weaker in nonpartisan elections?</p> <p>2 A. I know incumbents are more likely</p> <p>3 defeated in partisan elections, historically. So</p> <p>4 that would suggest that in nonpartisan elections</p> <p>5 they're more likely to lose. In fact, I say in</p> <p>6 paragraph 11 incumbent justices are more likely to</p> <p>7 lose in nonpartisan district-based elections than</p> <p>8 they are. So in a system like Mississippi, the</p> <p>9 incumbent justice is really more likely to lose,</p> <p>10 based on my 2005 article.</p> <p>11 Q. Sorry, more or less likely to lose?</p> <p>12 A. Incumbent justices are more likely to</p> <p>13 lose in nonpartisan district-based elections than</p> <p>14 they are in nonpartisan statewide elections, yes.</p> <p>15 Q. Are you familiar with a recent law that</p> <p>16 was passed in Mississippi, HB1020, concerning</p> <p>17 selection of judges in Jackson?</p> <p>18 A. I read something about it like when it</p> <p>19 was on New York Times or NBC News. But I don't</p> <p>20 recall the specifics. I do remember it was a</p> <p>21 controversy about changing the way judges are</p> <p>22 selected in Jackson, but that's the best of my</p> <p>23 recollection.</p> <p>24 Q. You gave a quote about that law to Yahoo</p> <p>25 News and Digital Journal. Do you recall that?</p>	<p>1 out some of them, that's unusual, right, and so</p> <p>2 then you have to ask why, you know, are we</p> <p>3 signaling out some and not others and where the</p> <p>4 criteria end and why is one method of selection</p> <p>5 good for some areas of the state and not for</p> <p>6 others. That's unusual. You don't see that a</p> <p>7 lot, if at all.</p> <p>8 Q. So I think the title of that article</p> <p>9 that you were quoted in was: Mississippi House</p> <p>10 Bill Will Create White Appointed Court System for</p> <p>11 Blackest City in America.</p> <p>12 Does that sound right to you?</p> <p>13 A. It might. I mean, I will say I did not</p> <p>14 write the headline.</p> <p>15 Q. Do you have a view on the headline?</p> <p>16 A. Do I have a view on the headline? The</p> <p>17 headline is provocative.</p> <p>18 Q. Do you agree with it, factually?</p> <p>19 A. Do I agree with it? House Bill Would</p> <p>20 Create -- that sounds consistent with the</p> <p>21 objections that were raised by local officials in</p> <p>22 Jackson. So I'm not -- I don't live in Jackson.</p> <p>23 I don't follow the thing in the ground. But that</p> <p>24 is consistent with what I read about the</p> <p>25 objections to this bill.</p>
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<p>1 A. Oh. I do now. I'm sure I did. What</p> <p>2 did I say?</p> <p>3 Q. Would it help to show you the article?</p> <p>4 A. If you want or you can just read me what</p> <p>5 I said.</p> <p>6 Q. So this is an article from February 15th</p> <p>7 of this year. Your quote was: But what makes</p> <p>8 this Mississippi situation abnormal is that the</p> <p>9 legislature is proposing a different way of</p> <p>10 selecting prosecutors and judges but only for one</p> <p>11 area of the state and all the local</p> <p>12 representatives in that area object to it.</p> <p>13 A. Yes. Yeah, I said that.</p> <p>14 Q. Is that still your opinion?</p> <p>15 A. Yes, unless the bill has changed. I</p> <p>16 haven't obviously thought about it since I gave</p> <p>17 that quote. But yeah, that's -- yeah, that sounds</p> <p>18 like me.</p> <p>19 Q. Could you say more about why this</p> <p>20 situation is unusual or abnormal?</p> <p>21 A. Well, yeah, because it's not -- when</p> <p>22 you -- if you think there's a problem with the way</p> <p>23 judges are selected or prosecutors are selected,</p> <p>24 that's fine, right, and the legislature certainly</p> <p>25 can change that. But when you're only signaling</p>	<p>1 Q. Do you have any reason to disagree with</p> <p>2 those objections or characterizations?</p> <p>3 A. I have no reason to opine. If that's</p> <p>4 how the local officials feel, and I certainly can</p> <p>5 see why they feel that way.</p> <p>6 Q. Thank you.</p> <p>7 Is there anything else that you would</p> <p>8 find notable about HB1020?</p> <p>9 A. Not that comes to the top of my head.</p> <p>10 If we can get a chance, I'd like a</p> <p>11 drink/bathroom break. Whenever you get done with</p> <p>12 this line of questioning.</p> <p>13 Q. Now is a great time for a break.</p> <p>14 (Off the record.)</p> <p>15 Q. (By Mr. Cheung) Dr. Bonneau, have you</p> <p>16 conducted any empirical studies of the levels of</p> <p>17 racial diversity on state courts?</p> <p>18 A. The levels of racial diversity. Yes, I</p> <p>19 think I have.</p> <p>20 Q. I think that was a 2000 article titled:</p> <p>21 Composition of State Supreme Courts.</p> <p>22 A. Yeah, that was my first journal article.</p> <p>23 Q. Do you recall what you did in that</p> <p>24 article?</p> <p>25 A. I believe in that article I simply</p>

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<p>1 compared how many justices, like, were black or 2 women or nonwhite by selection type. 3 Q. Is there a reason why you have studied 4 the level of racial representation on state 5 courts? 6 MR. WALLACE: Object to the form. I 7 don't think he said anything about racial 8 representation the way you talked about it 9 previously, but go ahead. 10 Q. (By Mr. Cheung) Or racial diversity. 11 A. Yeah, I mean I was in graduate school at 12 the time and I was, like, oh, this will be 13 interesting to see if there are any differences. 14 Because one of the allegations is that, you know, 15 to get a more diverse bench then elections will 16 lead you to have a less diverse bench. And so 17 it's an empirical question and it's an important 18 question so, you know, I collected some data and 19 just did a little descriptive piece. 20 Q. Why do you think it's an important 21 question? 22 A. Well, we talked earlier about 23 descriptive representation, right, and how 24 descriptive representation is important. And so 25 if it's true that one method of selection</p>	<p>1 are advocated by a lot of women and so -- but you 2 can have men who do. And so that's a more 3 substantive representation. 4 So substantive representation gets into 5 policy, gets into are the policies reflective of 6 the different groups. Whereas descriptive 7 representation is simply when you look out, does 8 it look like, you know, the population. 9 Q. And have you looked at using judicial 10 evaluations in the context of selecting judges? 11 MR. WALLACE: Object to the form, until 12 you explain what judicial evaluations mean. 13 THE WITNESS: Yeah, can you tell me what 14 you mean by judicial evaluations? 15 Q. (By Mr. Cheung) I believe in your past 16 work you've analyzed a system of electing judges 17 by using assessments or evaluations of judicial 18 performance. Do you recall that? 19 A. I don't. 20 Q. Okay. 21 A. What article was that? 22 Q. I'm not sure if it's a published article 23 but I think you've spoken about the topic of using 24 judicial evaluations. 25 A. I've spoken about judicial performance</p>
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<p>1 systematically gives you less diversity than other 2 methods, that's something that should be part of 3 the conversation. That's something that should go 4 into the decision about should you change your 5 method of selection, should you not, whatever. 6 It's an important piece. And if it's not true, 7 then we don't need to worry about that when we're 8 talking about best practices. 9 Q. And I know earlier we used the terms 10 "descriptive representation" and "substantive 11 representation." What do you mean by those terms? 12 A. Sure. So descriptive representation is 13 simply you look out and you see, oh, it's a 14 diverse bench, right? And you see, oh, if there's 15 30 percent women in a state and you have a state 16 legislature is 30 percent female, then you're 17 like, okay, that's pretty good descriptive 18 representation. That is it's properly reflective 19 of the demographics, the characteristics of the 20 population. 21 Substantive means, though, that you 22 represent the dominant interest of that group in 23 your behavior. So for example, you can have 24 female legislatures who don't support women's 25 rights or don't support some of the causes that</p>	<p>1 evaluations and certainly I think in one of my 2 edited books there was a chapter by a colleague 3 talking about some of her work on judicial 4 performance evaluations. But it's not something 5 that I've conducted independent research on. 6 Q. Okay. Got it. And what do you know 7 about judicial performance evaluations? 8 A. So judicial performance evaluations vary 9 across states. Sometimes they're just simple 10 surveys of the bar, sometimes they also involve 11 litigants, sometimes the involve whatever, right. 12 And in some places they're published, right, and 13 so whether a judge is -- there are scores on 14 certain things like temperament or fairness and so 15 on. And they can be given to voters in advance of 16 elections. In other areas it's much more of than 17 internal thing that's done by the bar. So there 18 are a lot of variations about, you know, how they 19 are. 20 Q. Are you aware of any literature about 21 biases in judicial elections? 22 A. Judicial elections? 23 Q. Judicial evaluations, I'm sorry. 24 A. Yes. 25 Q. And what do you know about those?</p>

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<p>1 A. So one of my colleagues at UNLV has done</p> <p>2 a lot of studies, Rebecca Gill, on that. And</p> <p>3 basically it's similar to what you see in student</p> <p>4 performance evaluations, like when you survey</p> <p>5 students in class. Women tend to be judged more</p> <p>6 harshly, white men are perceived as being more</p> <p>7 competent. And so the same kinds of things you</p> <p>8 see in nonlegal circles, right, from what I've</p> <p>9 read are also present in these judicial</p> <p>10 evaluations as well.</p> <p>11 Q. Are racial biases present in judicial</p> <p>12 evaluations?</p> <p>13 A. I don't recall that specifically, but</p> <p>14 I'm not saying no. I don't recall from my</p> <p>15 reading.</p> <p>16 Q. A few questions about redistricting.</p> <p>17 From what you know, when does redistricting</p> <p>18 typically occur?</p> <p>19 A. After -- well, the federal level, after</p> <p>20 a census.</p> <p>21 Q. And what about at the state level?</p> <p>22 A. I think it depends on the state</p> <p>23 constitution, right? In some states -- I mean, it</p> <p>24 depends on the office too, right? So if it's a</p> <p>25 federal office, right, like US House,</p>	<p>1 But I'm not going to tell him not to answer it.</p> <p>2 MR. CHEUNG: Okay. Your objection has</p> <p>3 been noted. Thank you, Mike.</p> <p>4 THE WITNESS: Can you please repeat the</p> <p>5 question?</p> <p>6 Q. (By Mr. Cheung) Is it important to</p> <p>7 redistrict after each census?</p> <p>8 A. What do you mean by "important"?</p> <p>9 Q. Well, why do you think redistricting</p> <p>10 occurs after a census?</p> <p>11 A. Well, it's required by the Constitution.</p> <p>12 Q. Does that make sense to you?</p> <p>13 A. Does that make sense to me? Well, sure,</p> <p>14 it makes sense because it's required by the</p> <p>15 Constitution. Does the Constitution make sense to</p> <p>16 me on that front? I've never really thought about</p> <p>17 it. I mean, I would say that sure, that if</p> <p>18 populations change or things shift significantly</p> <p>19 then, you know, if we believe that one person's</p> <p>20 vote should equal as much as another, it should.</p> <p>21 Now, it doesn't make a lot of sense in</p> <p>22 context of the Constitution because our electoral</p> <p>23 system with its electoral college ensures that, in</p> <p>24 fact, one person's vote doesn't equal the same as</p> <p>25 another's. But, you know, I don't know if you</p>
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<p>1 redistricting has to occur every 10 years after</p> <p>2 the census. If it's a state district, I suspect</p> <p>3 it varies based on the state, but I have not done</p> <p>4 any work on that.</p> <p>5 Q. Do you think it's important to</p> <p>6 redistrict after each census?</p> <p>7 MR. WALLACE: At this point I think I'm</p> <p>8 going to object. The order authorizes you to talk</p> <p>9 about his surrebuttal report, and I know you're</p> <p>10 entitled to go into his background as a scholar,</p> <p>11 but if he hasn't done any scholarship on that,</p> <p>12 what's the relevance to what the Court is allowing</p> <p>13 you to do today?</p> <p>14 MR. CHEUNG: Are you asking him not to</p> <p>15 answer the question?</p> <p>16 MR. WALLACE: I'm asking you to explain</p> <p>17 why you think you're entitled to ask it.</p> <p>18 MR. CHEUNG: Well, Mike, I think you're</p> <p>19 entitled to ask him not to answer it if you think</p> <p>20 the question is privileged.</p> <p>21 MR. WALLACE: I'm not going to tell him</p> <p>22 not to answer it, but the judge has given you a</p> <p>23 limited authority here, and pulling out political</p> <p>24 science questions from thin air to ask him about</p> <p>25 is I would think outside the scope of her order.</p>	<p>1 want to go down that path.</p> <p>2 Q. But you would agree that it's important</p> <p>3 for districts to reflect the existing population</p> <p>4 of the jurisdiction?</p> <p>5 A. Yeah, generally, that's right. Among --</p> <p>6 I will say there are other factors, too. Like,</p> <p>7 you know, for example, not splitting up towns or</p> <p>8 historical -- the general redistricting principles</p> <p>9 that the US Supreme Court has set out about</p> <p>10 compactness and continuity and communities of</p> <p>11 interest and whatever else. I mean, yeah, that's</p> <p>12 reasonable.</p> <p>13 Q. Yeah. I just mean in the broad sense</p> <p>14 that redistricting should occur on the basis of</p> <p>15 the most updated population data that we have.</p> <p>16 Would you agree?</p> <p>17 A. Within certain limits, yes.</p> <p>18 Q. Do you know the last time redistricting</p> <p>19 occurred with the Mississippi Supreme Court</p> <p>20 districts?</p> <p>21 A. I do not.</p> <p>22 Q. I can represent to you that the last</p> <p>23 time it happened was 1987. Do you know how many</p> <p>24 times the census has been taken since 1987?</p> <p>25 A. Well, it's every 10 years, so that would</p>

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<p>1 be three times -- four times, right? 2000, 2 2010 -- no. '87. So, '90, 2000, 2010, '20. 3 Q. Can you -- based on your understanding 4 of judicial election systems around the country, 5 do you know of any other judicial district that 6 has not been updated in the past 35 years? 7 A. I don't, but I don't know of any that 8 has either. And so I'm trying to think of, like, 9 the other four states -- the other three states 10 that have judicial elections. I'm not aware of 11 any times they've redistricted their districts. 12 That doesn't mean it doesn't happen -- it hasn't 13 happened. I'm just not aware of it. 14 Q. Can you think of any reason for not 15 updating districts after four census cycles? 16 A. Yes. 17 Q. What are those reasons? 18 A. There hasn't been significant population 19 change, there's no way to draw them in a way 20 that's more reflective of the state. So those are 21 a couple. 22 Q. Any other reasons? 23 A. Any other reasons, I think those are -- 24 if you don't have a significant population -- if 25 you feel like the current districts are good</p>	<p>1 black, and so there's a lot of agricultural 2 interest. And it tended to be heavily nonwhite 3 communities now because of the history of the soil 4 and the farming. 5 Q. Do you know if the Black Belt extends 6 into Mississippi? 7 A. I don't. 8 Q. Are you familiar with the Mississippi 9 Delta as a region? 10 A. I am. That's the part down by the -- in 11 the south, right, by the Gulf -- no. I guess I'm 12 not. 13 MR. SHANNON: You're not. 14 Q. (By Mr. Cheung) As a political 15 scientist, have you considered the extent to which 16 black voters might have similar interests due to a 17 shared history? 18 A. Have I personally considered, no, but 19 that's a pretty common finding among others. 20 Q. I think you have an article from 2009 21 titled: Impartial Judges, Race, Institutional 22 Context. Does that sound right? 23 A. Yes. 24 Q. You have a quote here that says: Given 25 the history of African Americans in the United</p>
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<p>1 representations of the state, right, and there's 2 not been meaningful deviations then, yeah, those 3 would be the ones that come to mind off the top. 4 Q. Do you know if there has been or has not 5 been population change in Mississippi since 1987? 6 A. Since '87? I'm trying to think of my 7 electoral map. I want to say y'all have increased 8 one electoral vote since '87, but I'm not sure. I 9 defer to people who -- I mean, '87 is a long time 10 ago. I wasn't even able to vote then. 11 Q. I wasn't born then. 12 A. I don't -- I can't answer that. I don't 13 know. You can tell me anything and I'd believe 14 it. 15 Q. In your work as a political scientist, 16 have you become familiar with what people refer to 17 as the Black Belt? 18 A. I refer to Black Belt -- yeah, in 19 Alabama particularly, yes. 20 Q. What is your understanding of the Black 21 Belt? 22 A. So my understanding of the Black Belt, 23 is really interesting. That basically it's the 24 part -- at least in Alabama -- of like the middle 25 of the state where the soil was rich, the soil was</p>	<p>1 States, African American judges might be more 2 sympathetic to less fortunate people. 3 A. Yes. 4 Q. Do you agree with that assessment? 5 A. Yes, and I think I have a bunch of 6 citations after that, too. Because that's not 7 something I would have said without citation. 8 But, yes. 9 Q. You also said: Since most criminal 10 defendants are either poor or racial minorities, 11 it is not hard to imagine that African American 12 judges would be more sympathetic to defendants 13 because of their own negative experiences in 14 society. 15 A. Correct. 16 Q. What is that history and that negative 17 experience referring to? 18 A. Well, I think it's referring to the fact 19 that for years African Americans were not treated 20 as full citizens of this country. For years they 21 weren't citizens at all. Then they were, you 22 know, partial citizens. And then, you know, even 23 after, you know, the Civil War and the passages of 24 13th, 14th and 15th amendments, we still had 25 institutionalized oppression where individuals,</p>

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<p>1 African Americans, were not treated the same as</p> <p>2 whites, until we got to the Civil Rights Act and</p> <p>3 Voting Rights Act. Those vestiges are still</p> <p>4 there. That's not all that long ago. You know,</p> <p>5 that's my parents' generation. And so I think</p> <p>6 it's -- you know, I think it's naive to assume,</p> <p>7 right, that those vestiges don't still permeate</p> <p>8 throughout in terms of available opportunities, in</p> <p>9 terms of a whole bunch of things.</p> <p>10 Q. So I'd like to turn to racially</p> <p>11 polarized voting. In your work as a political</p> <p>12 scientist, have you observed any patterns in terms</p> <p>13 of which parties or candidates black and white</p> <p>14 voters tend to support?</p> <p>15 A. Oh, yeah, I think everyone knows. Yes,</p> <p>16 black voters support the Democratic party.</p> <p>17 Q. When you say everyone knows that, are</p> <p>18 you referring to political scientists or what are</p> <p>19 you referring to?</p> <p>20 A. Everyone. I think if you walk out in</p> <p>21 the street and ask five people they would tell you</p> <p>22 that. So it's been established by scholars but</p> <p>23 it's also -- I mean, you can look at, like, any</p> <p>24 graph, you know, in any newspaper or anything</p> <p>25 else.</p>	<p>1 voters supporting Democrats that you mentioned</p> <p>2 earlier, do you know if that pattern is true in</p> <p>3 Mississippi?</p> <p>4 A. I have no reason to think it's not.</p> <p>5 Q. Do you know if the contrast between</p> <p>6 white and black voters is more or less stark in</p> <p>7 Mississippi compared to other states?</p> <p>8 A. I do not.</p> <p>9 Q. In your review, what makes African</p> <p>10 Americans more likely to be Democratic voters?</p> <p>11 A. Well, I think the Democratic party is</p> <p>12 the party that helped pass the Civil Rights Acts</p> <p>13 and the Voting Rights Act and also tends to</p> <p>14 promote bigger government, more social policies</p> <p>15 that help individuals, right, who need social</p> <p>16 services, who improve education, you know, for all</p> <p>17 kinds of reasons.</p> <p>18 And the Democratic party, I think, is</p> <p>19 not -- has been much more open in terms of</p> <p>20 nominating and electing African American</p> <p>21 officials. And so I think there are historical</p> <p>22 reasons and also current reasons, policy reasons.</p> <p>23 Q. So you mentioned the Civil Rights Act,</p> <p>24 the Voting Rights Act. At the risk of asking a</p> <p>25 very obvious question, but why would those laws be</p>
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<p>1 Q. Roughly speaking, do you know what</p> <p>2 percent of black voters tend to vote for</p> <p>3 Democrats?</p> <p>4 A. It's upwards of 90.</p> <p>5 Q. 90 percent?</p> <p>6 A. Yeah.</p> <p>7 Q. What about the percent of white voters</p> <p>8 that vote for Republicans?</p> <p>9 A. Well, that varies based on state. It's</p> <p>10 not 90 percent. But I don't have a hand --</p> <p>11 there's a lot more variations too, in terms of</p> <p>12 college-educated whites versus noncollege-educated</p> <p>13 whites. So a lot more factors, right, among white</p> <p>14 voters that help predict voter turnout that aren't</p> <p>15 as present with black voters.</p> <p>16 Q. And what about white Mississippians?</p> <p>17 A. What about white Mississippians?</p> <p>18 Q. In terms of their level of support for</p> <p>19 Republican party candidates?</p> <p>20 A. Well, I'm assuming it's pretty high</p> <p>21 because Republicans always win the elections in</p> <p>22 Mississippi. At least in statewide elections,</p> <p>23 right. Presidential elections, Senate elections.</p> <p>24 So yeah, that's my assumption.</p> <p>25 Q. In the upwards of 90 percent of black</p>	<p>1 relevant to you by Democrats -- why black lawyers</p> <p>2 support the Democratic party?</p> <p>3 A. Sure. Well, the Civil Rights Acts</p> <p>4 allowed -- ended public discrimination in places</p> <p>5 of accommodation. So all of a sudden now, you</p> <p>6 know, you couldn't discriminate in hotels,</p> <p>7 restaurants, other things, right, against black</p> <p>8 citizens. Voting Rights Act removed a lot of the</p> <p>9 impediments to black voters registering to vote</p> <p>10 and actually exercising their right to vote.</p> <p>11 And so those kinds of policies, right,</p> <p>12 that improved the lives of black Americans, you</p> <p>13 know -- it wasn't just the Democrats who did that.</p> <p>14 Obviously, as you know, we had party realignment</p> <p>15 and whatever else. But it was -- the way things</p> <p>16 have sorted out is Democrats now.</p> <p>17 Q. What is that partisan realignment that</p> <p>18 you're referring to?</p> <p>19 A. Well, so in the -- I mean, right, the</p> <p>20 Democrats, right, in the south, right, are</p> <p>21 different than Democrats in the north back then.</p> <p>22 Same thing with Republicans. And so it was a</p> <p>23 time, right, where you'd have, you know, southern</p> <p>24 Democrats voting much more so with southern</p> <p>25 Republicans, and northern Republicans and northern</p>

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<p>1 Democrats. But now those have aligned. So just</p> <p>2 like the -- you know, the Democrats and Democratic</p> <p>3 party in the south has largely been diminished,</p> <p>4 the same thing is true with the Republicans in the</p> <p>5 northeast, right? I mean, you don't have</p> <p>6 northeast Republicans anymore. I mean,</p> <p>7 occasionally you'll get someone like a Charlie</p> <p>8 Baker in Massachusetts, but that's, you know, the</p> <p>9 exception not the rule. I'd say that's sorting.</p> <p>10 Q. What caused that realignment?</p> <p>11 A. A number of factors caused that</p> <p>12 realignment. I think preferences of individuals.</p> <p>13 I think political parties, right, and so seeing</p> <p>14 opportunities. I mean, in the northeast, right,</p> <p>15 you see some Republicans who vote for you, you</p> <p>16 know, maybe 50 percent of the time and Democratic</p> <p>17 parties -- again, we get a Democrat in here would</p> <p>18 vote 80 percent of the time. So you start</p> <p>19 targeting those individuals and electing more</p> <p>20 co-partisans and the American electorate become</p> <p>21 much more polarized. There are a number of causes</p> <p>22 that have led to that.</p> <p>23 Q. Did the passage of the Civil Rights Act</p> <p>24 and the Voting Rights Act contribute to the</p> <p>25 realignment?</p>	<p>1 as Plaintiff's Exhibit 3, I believe.</p> <p>2 Dr. Bonneau, can you confirm that that's</p> <p>3 the initial report from Dr. Orey that you reviewed</p> <p>4 and responded to?</p> <p>5 A. It looks to be the case.</p> <p>6 Q. Let's turn to Pages 12 through 14 of the</p> <p>7 report, and if you wouldn't mind taking a moment</p> <p>8 to review those pages.</p> <p>9 A. Okay.</p> <p>10 Q. So I think your testimony earlier was</p> <p>11 that you have concerns about the inferences that</p> <p>12 Dr. Orey can draw from these results, but you take</p> <p>13 his factual findings or his results to be true.</p> <p>14 Is that right?</p> <p>15 A. I take the estimates that he has using</p> <p>16 the ecological inference, yes.</p> <p>17 Q. So your reports do not dispute</p> <p>18 Dr. Orey's implementation of ecological inference</p> <p>19 in terms of the accuracy of its code?</p> <p>20 A. Correct.</p> <p>21 Q. You don't dispute the accuracy of the</p> <p>22 data that he uses?</p> <p>23 A. Correct.</p> <p>24 Q. And you don't dispute the accuracy of</p> <p>25 his computations?</p>
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<p>1 A. I think without question.</p> <p>2 Q. And in your view what makes white people</p> <p>3 more likely to be Republican voters?</p> <p>4 A. What makes white people more likely to</p> <p>5 be Republican voters? Well, again, there are a</p> <p>6 number of things. I think white people tend to --</p> <p>7 I think the Republican party has done a really</p> <p>8 good job of appealing to a time where white people</p> <p>9 were, I say, more prominent, right, and had better</p> <p>10 economic fortunes than they do now, where you</p> <p>11 didn't need a college education to have a good</p> <p>12 middle class life and so on. So I do think</p> <p>13 there's a economic interest. This is particularly</p> <p>14 true for lower income, lower educated whites. You</p> <p>15 know, and the Republican party does a good job of</p> <p>16 appealing to these individuals. Religion is part</p> <p>17 of it, you know. I mean, there are a lot of</p> <p>18 things.</p> <p>19 Q. Let's move on to Dr. Orey's report. I</p> <p>20 can give you a copy of that.</p> <p>21 A. Sure.</p> <p>22 Q. I'm handing you a copy of the October</p> <p>23 report, 2022.</p> <p>24 (Exhibit 3 marked for identification.)</p> <p>25 Q. (By Mr. Cheung) That's now been marked</p>	<p>1 A. Correct.</p> <p>2 Q. Based on those tables on pages 12 to 14,</p> <p>3 did Dr. Orey find that black voters typically</p> <p>4 support the black candidate about 90 percent of</p> <p>5 the time?</p> <p>6 A. That's fair.</p> <p>7 Q. For example, I think in Table 1 if we</p> <p>8 look at the Westbrook election, Dr. Orey</p> <p>9 estimated that Ms. Latrice Westbrook earned about</p> <p>10 90.46 of the black vote in 2020; is that right?</p> <p>11 A. That is correct.</p> <p>12 Q. And white support, according to</p> <p>13 Dr. Orey's estimates, for black candidates was</p> <p>14 typically below 15 percent?</p> <p>15 A. Typically, that's correct.</p> <p>16 Q. And in the, again, the Westbrook's</p> <p>17 example from 2020, she received less than</p> <p>18 10 percent of the white vote?</p> <p>19 A. Correct.</p> <p>20 Q. Are those estimates consistent with your</p> <p>21 understanding of voting patterns among black and</p> <p>22 white voters?</p> <p>23 A. Yes.</p> <p>24 Q. In paragraph 37 of your January report</p> <p>25 you said that it is highly unlikely these</p>

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<p>1 candidates lost because they are African American?</p> <p>2 A. Correct.</p> <p>3 Q. Would it be fair to say that those</p> <p>4 African American candidates lost because the</p> <p>5 majority of white voters voted for a different</p> <p>6 candidate?</p> <p>7 MR. WALLACE: I'm going to object to any</p> <p>8 questioning on paragraph 37. It's outside the</p> <p>9 scope of the order. I will not tell him not to</p> <p>10 answer, but we'll deal with it if you ever offer</p> <p>11 it in court. Proceed.</p> <p>12 THE WITNESS: Please repeat the</p> <p>13 question.</p> <p>14 Q. (By Mr. Cheung) Would it be fair to say</p> <p>15 that those African American candidates lost</p> <p>16 because the majority of white voters voted for a</p> <p>17 different candidate?</p> <p>18 A. Because of the white -- I would say it</p> <p>19 differently.</p> <p>20 Q. How would you say it?</p> <p>21 A. I would say that those African American</p> <p>22 candidates lost because -- because they didn't get</p> <p>23 enough votes, likely because they were Democrats.</p> <p>24 Q. And they were Democrats, and they lost</p> <p>25 because they did not earn the votes of more white</p>	<p>1 is that correct?</p> <p>2 A. Well, and then there were incumbents</p> <p>3 after that, like Justice King.</p> <p>4 Q. Right. But at the time of their</p> <p>5 election, they had already been in office?</p> <p>6 A. I think I said earlier that I wasn't</p> <p>7 sure if any African American candidate had ever</p> <p>8 successfully run not as an appointee, so I will</p> <p>9 stick to that. But certainly the ones I looked at</p> <p>10 for my report, that is true.</p> <p>11 Q. Your view is that District One, as</p> <p>12 currently configured, black voters can already</p> <p>13 elect their preferred candidate?</p> <p>14 A. Correct.</p> <p>15 Q. Is that in most cases, in some cases?</p> <p>16 A. I would say -- in most cases, I would</p> <p>17 say two of the three justices in District One are</p> <p>18 the black preferred candidates.</p> <p>19 Q. Based on your understanding of these</p> <p>20 voting patterns, would you agree that a district</p> <p>21 that has a majority African American population</p> <p>22 has a greater chance of electing someone preferred</p> <p>23 by African American voters than a district that is</p> <p>24 minority African Americans?</p> <p>25 A. Sure.</p>
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<p>1 voters?</p> <p>2 A. Of more Republicans, or as their</p> <p>3 opponents. I mean, so they could have, right,</p> <p>4 gotten more black voters, as well. So they didn't</p> <p>5 lose -- like, if they lost because -- they could</p> <p>6 have lost because they didn't get more white</p> <p>7 voters; they could have lost because they didn't</p> <p>8 get more black voters. They could have lost</p> <p>9 because they were Democrats.</p> <p>10 Q. Do you know if there were enough black</p> <p>11 voters in the district to put them over the top,</p> <p>12 given that, you know, someone like Ms. Westbrook</p> <p>13 is already earning over 90 percent of the black</p> <p>14 vote?</p> <p>15 A. I don't know how many black voters voted</p> <p>16 in that election.</p> <p>17 Q. And overall as to District One, is it</p> <p>18 your conclusion that racial polarization exists</p> <p>19 but not to the extent that black candidates are</p> <p>20 unable to win election to Mississippi Supreme</p> <p>21 Court?</p> <p>22 A. I think, yeah, I stipulate to that.</p> <p>23 Q. Those black candidates that did win</p> <p>24 election to Mississippi Supreme Court, they're all</p> <p>25 appointees running with an incumbency advantage;</p>	<p>1 Q. Do you know what percentage of the</p> <p>2 voting age population of District One is black?</p> <p>3 A. I do not.</p> <p>4 Q. I can represent to you that it's about</p> <p>5 49 percent --</p> <p>6 MR. WALLACE: I'm going to object to the</p> <p>7 form of the question, assumes facts not in</p> <p>8 evidence.</p> <p>9 Q. (By Mr. Cheung) Can you assume that</p> <p>10 fact to be true for purposes of this deposition?</p> <p>11 A. I've -- can I assume that fact to be</p> <p>12 true? I mean, if we're talking about</p> <p>13 hypotheticals, we can talk about a hypothetical</p> <p>14 district where blacks are 49 percent of the vote,</p> <p>15 sure, I can stipulate that for the next few</p> <p>16 questions.</p> <p>17 Q. Thank you. Let's turn to Appendix A of</p> <p>18 your report. In Appendix A did you identify</p> <p>19 Ms. Westbrooks as a black candidate who lost her</p> <p>20 election in District One in 2020?</p> <p>21 A. I did.</p> <p>22 Q. Based on your table, did Ms. Westbrooks</p> <p>23 win about 48-and-a-half percent of the vote?</p> <p>24 A. Yes.</p> <p>25 Q. Given that the district is 49 percent</p>

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<p>1 black voting age population, as we assumed, and 2 that Ms. Westbrooks won 48-and-a-half percent of 3 the vote, do you think it's a fair estimate to say 4 that if we added another point of black voting age 5 population to a district it's likely to increase 6 her vote share by a little bit less than 7 one percent? 8 A. Yes, and also if you added more 9 Democrats as well. 10 Q. As we discussed earlier, Ms. Westbrooks, 11 according to Dr. Orey's estimates earned about 12 90 percent of the black vote? 13 A. Correct. 14 Q. Given that she's earned 48-and-a-half 15 percent of the vote shared, she's about 1.6 16 percent short of winning the majority of the 17 election in 2020? 18 A. Correct. 19 Q. And taking the fact that she's earned 20 about 90 percent of the black vote, would you 21 agree that if the black voting age population in 22 District One had been three to four points higher, 23 she likely would have won in 2020? 24 A. I don't know if I can say that because I 25 don't know what the voting turnout was. I don't</p>	<p>1 Q. And so do you have any reason to think 2 that other black voters would react to incumbency 3 differently if they were added to District One? 4 A. No, I mean -- no, but, again, I mean, 5 you're assuming, again, the same kinds of turnout 6 rate and participation rate and everything else, 7 yes. 8 Q. Right. So if we assume the same turnout 9 and participation rate, do you think that if the 10 black voting age population of District One had 11 been 3 to 4 percentage points higher, 12 Ms. Westbrooks likely would have won in 2020? 13 A. What I'm saying is if you added 3 to 4 14 percent of black voters to District One and these 15 voters behaved the same way as the voters who are 16 already in District One, then that likely would 17 have led to Ms. Westbrooks winning her race. 18 Q. Just to sum up. In 2020, Ms. Westbrooks 19 lost even though District One had 49 percent black 20 voting age population and she had 90 percent of 21 that black support. 22 MR. WALLACE: Once again, object to the 23 making of assumptions with facts not in evidence. 24 THE WITNESS: And I would also point 25 that Justice King won with 100 percent of the</p>
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<p>1 know if that extra percentage would have turned 2 out to vote or -- so I can't say that. 3 Q. What if we assume that voter turnout 4 remains as it is in District One? 5 A. Well, I think it's -- I mean, it's hard 6 to say, right, because again, right, she was going 7 up against an incumbent, and we've already talked 8 about how incumbents overwhelmingly win. And 9 there was another incumbent in 2020, Justice King, 10 who no one even bothered to challenge. And so 11 it's hard to say if adding that extra percentage 12 of the vote would have been enough to overcome the 13 incumbency advantage. You're assuming that extra 14 percent of vote would have voted in the same 15 percentages as the population of the vote that's 16 already there. I mean, yeah, it's possible. It's 17 possible you might need to add 10 percent. I 18 don't know. But I think there are a lot of -- I 19 think concluding that would require a lot of 20 assumptions that I don't think the data support 21 make it. 22 Q. The point about an incumbency, that did 23 not prevent 90 percent of the black voters from 24 supporting Westbrooks in that election? 25 A. Correct.</p>	<p>1 vote, black and white. 2 Q. (By Mr. Cheung) Justice King was not 3 contested in his reelection? 4 A. Correct, which I would argue is 5 important, but we can talk about that later. 6 Q. We'll get to that later. Appreciate 7 your answers, Dr. Bonneau. 8 So I'd like to turn to paragraph 49 of 9 your January report. Point out the fact that 10 Ceola James came in third place even though she 11 was the only African American candidate in that 12 race? 13 MR. WALLACE: Same as the prior 14 objection. It's outside the scope of the court 15 order. I will not tell him he can't answer it. 16 THE WITNESS: Correct. 17 Q. (By Mr. Cheung) What is the 18 significance of the fact that James was not the 19 preferred candidate of black voters? 20 A. Well, she might have been, I don't know. 21 What I said was if she was the preferred candidate 22 of black voters and there was a three-person race, 23 given what you've just described as demographics 24 of that district, she would have advanced to the 25 runoff, with the two white canceling the white</p>

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<p>1 vote. But, in fact, it turns out she probably</p> <p>2 wasn't the preferred candidate of -- so just</p> <p>3 because, you know, you have a black candidate does</p> <p>4 not mean that candidate is the black preferred</p> <p>5 candidate. Which I think is the assumption that</p> <p>6 is made in a lot of Orey's.</p> <p>7 Q. So you're not sure if Ms. James was the</p> <p>8 black preferred candidate or not?</p> <p>9 A. It's hard for me to think that she was</p> <p>10 if she only got 10 percent of the vote.</p> <p>11 Q. Okay. So your conclusion is that she</p> <p>12 likely was not the preferred black candidate in</p> <p>13 this case?</p> <p>14 A. Correct. Well, if 49 percent of the</p> <p>15 district is African American and you have three</p> <p>16 candidates, to only get 10 percent would suggest</p> <p>17 that she was not the preferred candidate of</p> <p>18 African Americans.</p> <p>19 Q. What is the significance of that fact?</p> <p>20 A. That black candidates are not</p> <p>21 necessarily black preferred candidates.</p> <p>22 Q. Why is that relevant to your analysis?</p> <p>23 A. Well, it's relevant, right, because in</p> <p>24 the Orey report, right, he talked a lot about the</p> <p>25 black candidate, right? So if you look at</p>	<p>1 Q. Similarly, I think in your September</p> <p>2 report in paragraph 7 you point out that a black</p> <p>3 Democrat, Cecil Brown -- you point out that a</p> <p>4 black Democrat lost to the white Democrat in the</p> <p>5 2015 primary for public service commissioner.</p> <p>6 A. Correct.</p> <p>7 Q. And is the significance of the fact the</p> <p>8 same as what we just discussed?</p> <p>9 A. Correct. That if Brown was the</p> <p>10 preferred candidate to black voters in the</p> <p>11 primary, which again, which is likely given the</p> <p>12 margin of his victory, even holding a political</p> <p>13 party of that candidates' constant, black voters</p> <p>14 don't necessarily favor black candidates.</p> <p>15 Q. And so your view is that because black</p> <p>16 voters did not necessarily prefer the black</p> <p>17 candidate, black voters, at least in the</p> <p>18 Democratic primary, are not being driven by racial</p> <p>19 bias?</p> <p>20 A. Correct.</p> <p>21 Q. Are you aware of any similar evidence</p> <p>22 showing that white voters are not being driven by</p> <p>23 racial bias in their choice of candidates?</p> <p>24 A. I don't think that's been analyzed. I</p> <p>25 mean, I haven't seen anything in either Orey's</p>
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<p>1 Table 1, black candidate. Table 2, black</p> <p>2 candidate. A black candidate is not synonymous</p> <p>3 with black preferred candidate. A black preferred</p> <p>4 candidate could be Jim Kitchens, could in fact be</p> <p>5 a white candidate. And so we can't simply look</p> <p>6 and see how African American candidates do, we</p> <p>7 have to look at how African American preferred</p> <p>8 candidates do.</p> <p>9 Q. And so in this particular race in 2008,</p> <p>10 were black voters voting cohesively for Kitchens?</p> <p>11 A. I don't have that -- I don't know. I</p> <p>12 don't see that in -- I don't know if they were or</p> <p>13 not. I can tell you they almost certainly were</p> <p>14 not voting cohesively for James.</p> <p>15 Q. And what do you think white voters</p> <p>16 were -- who white voters were voting for?</p> <p>17 A. My assumption is they were voting for</p> <p>18 the Republican incumbent, Smith, but, again, I</p> <p>19 don't know.</p> <p>20 Q. And in that election, Kitchens won?</p> <p>21 A. Correct.</p> <p>22 Q. And so do you think in all likelihood</p> <p>23 Mr. Kitchens was the preferred candidate of black</p> <p>24 voters?</p> <p>25 A. I do.</p>	<p>1 report or -- that looked at that.</p> <p>2 Q. But there's nothing in your report that</p> <p>3 goes to that?</p> <p>4 A. Correct.</p> <p>5 Q. Would you agree that in the Democratic</p> <p>6 primary context that partisan affiliation cannot</p> <p>7 explain why black and white Democrats choose</p> <p>8 different candidates?</p> <p>9 A. Well, yes, because the party is held</p> <p>10 constant as I say in paragraph 7.</p> <p>11 Q. If black voters don't have a stronger</p> <p>12 preference for black Democrats over white</p> <p>13 Democrats, in your view does that preclude a</p> <p>14 finding of racially polarized voting?</p> <p>15 MR. WALLACE: Would you repeat that? I</p> <p>16 think you're asking him for a legal opinion.</p> <p>17 Q. (By Mr. Cheung) If black voters don't</p> <p>18 have a stronger preference for black Democrats</p> <p>19 over white Democrats in your view does that</p> <p>20 preclude a finding of racially polarized voting?</p> <p>21 MR. WALLACE: I think that's probably</p> <p>22 not a legal opinion so I think you can answer it.</p> <p>23 THE WITNESS: Does it preclude it no,</p> <p>24 but it makes it more difficult because it suggests</p> <p>25 that party is what's really working here, not</p>

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<p>1 racial analyst.</p> <p>2 Q. (By Mr. Cheung) Is it possible that</p> <p>3 black voters supported the white Democrat for</p> <p>4 reasons related to race?</p> <p>5 A. Is it -- sure, it's possible that black</p> <p>6 Democrats supported a white Democrat, sure.</p> <p>7 Q. What are some reasons that would fit</p> <p>8 that pattern?</p> <p>9 A. Well, if they thought that the white</p> <p>10 Democratic candidate was more aligned with their</p> <p>11 views, with the voters' views on certain issues.</p> <p>12 Q. And by issues you mean issues that have</p> <p>13 a racial component to them?</p> <p>14 A. Yeah, issues that are salient to the</p> <p>15 black community. I mean, they may not have a</p> <p>16 racial component to them, but they may be of</p> <p>17 interest, or of higher interest.</p> <p>18 Q. Is it possible that black voters</p> <p>19 nominate white Democrats because they view white</p> <p>20 Democrats as being more electable in the general</p> <p>21 election compared to black candidates?</p> <p>22 A. That's possible, sure.</p> <p>23 Q. Is it possible that a white Democrat is</p> <p>24 better aligned with black voters on issues of</p> <p>25 racial equality as opposed to a black candidate</p>	<p>1 factors that the candidate ends up being the</p> <p>2 candidate preferred by blacks. So the black</p> <p>3 preferred candidate, the race of that candidate is</p> <p>4 one factor among several others that go into that</p> <p>5 calculation for people.</p> <p>6 Q. And so you agree that just because that</p> <p>7 the race of the candidate does not determine who</p> <p>8 black voters vote for does not mean that those</p> <p>9 voters are making decisions independently of race?</p> <p>10 A. Making decisions independently. Say</p> <p>11 that again, please.</p> <p>12 Q. Would you agree that the fact that black</p> <p>13 voters are not choosing candidates on the basis of</p> <p>14 race, that does not preclude black voters from</p> <p>15 selecting candidates for reasons related to race?</p> <p>16 A. Yes, that does not preclude that. They</p> <p>17 certainly could be doing that as well.</p> <p>18 Q. And so in your reports here you do not</p> <p>19 conduct any analysis to rule out the possibility</p> <p>20 that black voters support candidates because of</p> <p>21 their views on race issues?</p> <p>22 A. Correct.</p> <p>23 Q. I have a few questions about your</p> <p>24 experience with racially polarized voting, which</p> <p>25 we talked a little bit about earlier. Could you</p>
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<p>1 elected in a primary?</p> <p>2 A. Yeah, in a given primary, sure, it's</p> <p>3 possible.</p> <p>4 Q. Is it possible that black voters think</p> <p>5 that the white Democratic is a better messenger on</p> <p>6 issues of racial equality as compared to a black</p> <p>7 candidate?</p> <p>8 A. Possibly.</p> <p>9 Q. Is it possible that black voters support</p> <p>10 a white Democrat over a black Democrat because the</p> <p>11 white Democrat is endorsed by prominent black</p> <p>12 individuals?</p> <p>13 A. Sure.</p> <p>14 Q. Did you consider those possibilities</p> <p>15 when reaching a conclusion that black voters</p> <p>16 support white Democrats and therefore their vote</p> <p>17 preference is non-basis of race?</p> <p>18 A. Well, I think those things confirm what</p> <p>19 I said, right, that they're making this choice,</p> <p>20 this strategic choice, as opposed to based on any</p> <p>21 number of factors. I have no -- unless we go out</p> <p>22 and we have survey data of what these voters, you</p> <p>23 know, what they said their preferences were in</p> <p>24 these elections, I don't think we can eliminate</p> <p>25 anything. But certainly I think there are more</p>	<p>1 give me a brief overview of the experience you</p> <p>2 have with the subject of racially polarized</p> <p>3 voting?</p> <p>4 A. My experience as a professor?</p> <p>5 Q. As a professor or as an expert.</p> <p>6 A. Sure. So my experience is I have read</p> <p>7 the articles that have used or have examined</p> <p>8 racially polarized voting. I'm familiar with the</p> <p>9 reason those analyses are conducted, and -- yeah,</p> <p>10 I have consumed scholarship.</p> <p>11 Q. Have you taught courses about racially</p> <p>12 polarized voting?</p> <p>13 A. Racially polarized voting would not be</p> <p>14 the topic of a class. It might be something</p> <p>15 that's done in a class. And, no.</p> <p>16 Q. Have you discussed it as a topic within</p> <p>17 a class?</p> <p>18 A. Not that I recall.</p> <p>19 Q. And have you written any articles about</p> <p>20 racially polarized voting?</p> <p>21 A. No. Unless you tell me I did.</p> <p>22 Q. Have you given any talks about racially</p> <p>23 polarized voting?</p> <p>24 A. No.</p> <p>25 Q. Have you ever done any racially</p>

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<p>1 polarized voting analyses to determine whether it</p> <p>2 exists in a given jurisdiction?</p> <p>3 A. Again, thinking back to some of my</p> <p>4 methods classes it's possible I did an assignment</p> <p>5 that looked at it, but I can't recall any</p> <p>6 specifics or anything.</p> <p>7 Q. Would you consider yourself an expert on</p> <p>8 racially polarized voting?</p> <p>9 A. Would I consider myself an expert on</p> <p>10 racially polarized voting? I would say that's not</p> <p>11 my scholarly identity, no.</p> <p>12 Q. Do you happen to know Dr. Orey either</p> <p>13 personally or professionally?</p> <p>14 A. I do.</p> <p>15 Q. Have you ever met with him?</p> <p>16 A. I know Dr. Orey very well.</p> <p>17 Q. Could you tell me more about your</p> <p>18 relationship with Dr. Orey?</p> <p>19 A. Sure. I mean, D'Andra and I for years</p> <p>20 scored advanced placement governing exams</p> <p>21 together. We were in leadership there. And I</p> <p>22 occasionally see him at conferences. And so, you</p> <p>23 know, yeah, I know D'Andra professionally. We</p> <p>24 don't have a personal relationship outside of</p> <p>25 casual acquaintances.</p>	<p>1 inference. We mentioned earlier the three types</p> <p>2 of ecological -- sorry, the three types of</p> <p>3 empirical methods that have been used to</p> <p>4 demonstrate racially polarized voting analyses.</p> <p>5 Ecological inference, ecological regression and</p> <p>6 homogeneous precinct analysis. Do you recall</p> <p>7 that?</p> <p>8 A. I do.</p> <p>9 Q. Do you know which of the three methods</p> <p>10 is considered to be the most reliable in courts in</p> <p>11 voting rights cases?</p> <p>12 A. My under --</p> <p>13 MR. WALLACE: That is a legal opinion</p> <p>14 when you've get to courts, and I object to the</p> <p>15 form for that reason.</p> <p>16 THE WITNESS: My understanding is it's</p> <p>17 ecological inference.</p> <p>18 Q. (By Mr. Cheung) Does your report</p> <p>19 identify any empirical methods that would be more</p> <p>20 reliable than ecological inference?</p> <p>21 A. It depends what you're asking. So it</p> <p>22 depends on what questions you're asking. If</p> <p>23 you're trying to get at racially polarized voting,</p> <p>24 no, my report does not identify anything that</p> <p>25 would be more reliable than ecological inference.</p>
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<p>1 Q. Have you spoke to him before?</p> <p>2 A. Sure, I've spoken to him.</p> <p>3 Q. Have you spoken to him about this case?</p> <p>4 A. No, but so -- we were both at a</p> <p>5 conference together in March and we ran into each</p> <p>6 other on the elevator, and he said something like,</p> <p>7 oh, I see we're going up against each other. I</p> <p>8 said, oh, yeah. And that was basically the extent</p> <p>9 of it. It was a very casual -- I didn't mention</p> <p>10 anything. He just brought it up kind of like to</p> <p>11 break the tension, I guess or whatever. Then I</p> <p>12 ran into him at the hotel bar later on and just</p> <p>13 had conversation about how he's doing, his health,</p> <p>14 the great undergraduate program he's running at</p> <p>15 Jackson State.</p> <p>16 Q. Did you say anything to him about this</p> <p>17 case?</p> <p>18 A. Not besides what I just told you.</p> <p>19 Q. Did you discuss racially polarized</p> <p>20 voting analyses?</p> <p>21 A. No.</p> <p>22 Q. Anything else you can think of from that</p> <p>23 conference encounter?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Okay. I'd like to turn to ecological</p>	<p>1 That does not mean the ecological inference,</p> <p>2 though, is the right way to approach the analyses</p> <p>3 in this case or in all cases, and it also does</p> <p>4 not, you know, mitigate any of the criticisms of</p> <p>5 ecological inference that other scholars have</p> <p>6 noted.</p> <p>7 Q. Do you know of any empirical methods</p> <p>8 that would be better at generating racially</p> <p>9 polarized voting estimates compared to ecological</p> <p>10 inference?</p> <p>11 A. I do not.</p> <p>12 Q. So in your September report you identify</p> <p>13 some general concerns with EI -- with ecological</p> <p>14 inference as a method in the racially polarized</p> <p>15 voting context; is that right?</p> <p>16 A. That is right.</p> <p>17 Q. Did you raise those methodological</p> <p>18 concerns in your January report?</p> <p>19 A. In my January report I did not do any</p> <p>20 work regarding ecological inference.</p> <p>21 Q. Dr. Orey also used ecological inference</p> <p>22 in his original October 2022 report; is that</p> <p>23 right?</p> <p>24 A. I believe that's correct.</p> <p>25 Q. Is there a reason why your January</p>

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<p style="text-align: right;">Page 110</p> <p>1 report didn't address methodological concerns with 2 ecological inference? 3 A. I wasn't focused on that. I was focused 4 on other things. 5 Q. In paragraph 13 of your September 6 report, you discuss a concern with ecological 7 inference methods because they assume that 8 minority voters behave similarly across different 9 precincts; is that right? 10 A. Correct. 11 Q. You then go on to say that that 12 assumption is, quote, untenable; is that right? 13 A. Correct. 14 Q. Do you cite any authority for that 15 conclusion? 16 A. That it's untenable? 17 Q. Yes. 18 A. That minorities are relatively 19 affluently racially integrated precincts and 20 treated as distinguishable -- that assumption is a 21 fact, right? So no, -- so my conclusion that it's 22 an untenable assumption is that the proportion of 23 white and minority voters who support each 24 candidate is the same at each precinct. We can 25 debate whether or not that's a tenable</p>	<p style="text-align: right;">Page 112</p> <p>1 because you can't test the key assumption. 2 Q. So you said a lot there and I just want 3 to break it down. 4 In paragraph 14, like you said, Dr. Orey 5 said that King's solution overcomes this 6 limitation about variation across precincts? 7 A. Correct. 8 Q. Do you agree that EI overcomes this 9 precinct variation issue, at least King's method 10 of EI? 11 A. I'm not sure. I have correspondence 12 from one of the authors of the criticism that says 13 that that assumption still applies to King's 14 method as well. But I'm not -- I'm not 15 methodologically sophisticated enough to dig under 16 the hood and determine that for myself. 17 Q. Do you know -- if the precinct variation 18 assumption is problematic, do you know what effect 19 that has on the estimates here? 20 A. Sure, because if it's -- if the precinct 21 assumption is -- it invalidates the estimates 22 because you're making assumptions about voters and 23 you're implying that a voter in a district here in 24 Jackson, the same factors, you have the same 25 percentage of the precinct here in Jackson as you</p>
<p style="text-align: right;">Page 111</p> <p>1 consumption. In my opinion that's a completely 2 untenable assumption at each precinct. Are there 3 no differences between precincts, right, regarding 4 the minority and white support? I don't know 5 anybody who would argue that that's a tenable 6 assumption. 7 Q. Then in paragraph 14 of your September 8 report you discuss an issue about using Ordinary 9 Least Squares regression in question to estimate 10 vote shares. Do you see that? 11 A. I do. 12 Q. Do you know if Dr. Orey used Ordinary 13 Least Squares in his analysis? 14 A. My understanding is he used King's 15 ecological inference. 16 So the Ordinary Least Squares, right, is 17 a way to show -- a way to show how the ecological 18 inference technique run by King, which is based on 19 some of the same assumptions is -- can lead to 20 biased parameters. The conclusion that the 21 solution addresses the limitation. But assumes 22 that the distribution in unimodel, but the data, 23 of course, are bimodel. So that undermines one of 24 the key assumptions. So EI might work, but 25 there's no way you asses whether or not it works</p>	<p style="text-align: right;">Page 113</p> <p>1 would a precinct down in the suburbs. That 2 assumption would lead to biased estimates. 3 Q. Do you know if that bias leads to an 4 overestimate or an underestimate? 5 A. I do not. 6 Q. You did not perform any analysis in your 7 report to determine whether the bias would be an 8 underestimate or an overestimate? 9 A. Correct. 10 Q. In paragraphs 14 and 15 you cite this 11 1998 article from Wendy Cho; is that right? 12 A. I do. 13 Q. Could you walk me through what Dr. Cho's 14 critique of ecological inference? 15 A. Sure. Dr. Cho's critique is that in 16 order for ecological inference to be correct and 17 appropriate, right, the specification has to be 18 correct. That is the model specification has to 19 be spot on. Because otherwise what will happen -- 20 I give an example that she gives. The parameters, 21 once again, right, are biased. So the big 22 problem, though, is we don't really know if we 23 have a specification proper -- proper 24 specification. We don't know whether or not the 25 model we're estimating is actually the true model.</p>

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<p>1 And so given that, it's hard to evaluate whether 2 or not the model we estimate is accurate or not. 3 Q. And so Dr. Cho's discussion in paragraph 4 14, that's based on a hypothetical dataset where 5 she set some level of precinct level variation; is 6 that correct? 7 A. That's correct, right, to see what the 8 bias would be. So in a simulation, she knows the 9 true values. What we're trying to do with data, 10 is recover the true values, right, recover data we 11 don't have from data we have. But one way to test 12 whether or not we can do that accurately is to 13 generate our own data and run simulations and then 14 we can do comparisons, which is what she does. 15 Q. But for your report, you did not look at 16 the underlying data to test the assumption? 17 A. Correct. 18 Q. And so you wouldn't know if -- to the 19 extent that there is a bias, whether that results 20 in an underestimate versus an overestimate of 21 racially polarized voting? 22 A. Correct. 23 Q. On this unimodel assumption point, does 24 your report cite any academic publications after 25 1998?</p>	<p>1 so I would say it's -- you know, that would be 2 kind of external validity for the kind of 3 measures. 4 I want to point out that neither of my 5 reports really hangs on this ecological inference 6 issue, but yes. 7 Q. Okay. I'd like to show you one of those 8 articles. 9 A. Sure. 10 (Exhibit 4 marked for identification.) 11 Q. (By Mr. Cheung) Do you have what's now 12 been marked as Exhibit 4? 13 A. I do. 14 MR. WALLACE: Is it 4 or is it 5? I 15 thought we had two reports from him, two reports 16 from Orey. This should be 5? 17 MR. CHEUNG: We only showed him the 18 first Orey report. We didn't show him the second 19 one. 20 MR. WALLACE: We have not marked the 21 second. Thank you. 22 Q. (By Mr. Cheung) Would you like to take 23 a moment to review that article? 24 MR. WALLACE: A moment or a week? 25 THE WITNESS: I will skim it.</p>
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<p>1 A. It does not. 2 Q. Is there a reason for that? 3 A. I didn't see any. 4 Q. Do you know if ecological inference has 5 continued to be used to estimate racially 6 polarized voting since 1998? 7 A. It has. 8 Q. Do you know whether ecological inference 9 has been accepted by courts as a reliable method 10 since 1998? 11 A. My understanding is it has. 12 Q. Are you familiar with recent scholarship 13 showing that ecological inference estimates of 14 racially polarized voting could generate results 15 that are similar to that of exit polls? 16 MR. WALLACE: Similar to what? 17 MR. CHEUNG: Results from exit polls. 18 MR. WALLACE: Oh, okay. 19 THE WITNESS: I'm vaguely aware of that, 20 yes. Not specifics, but yes. 21 Q. (By Mr. Cheung) Does that tell you 22 anything about the accuracy of EI as a method in 23 racially polarized voting context? 24 A. Well, I think it -- I think that's 25 evidence that you give as some consolation. And</p>	<p>1 Q. (By Mr. Cheung) Let me know when you're 2 ready to talk about it. 3 A. All right. 4 Q. Thank you for reviewing for the pop 5 quiz. 6 I'd like to turn to page 274 of that 7 article, which I think is where the first 8 highlighting is. 9 A. Yes. 10 Q. Do you see the first highlight where it 11 says: There is no convincing evidence that either 12 iterative EI or RxC is biased toward or against 13 findings of RPV. 14 A. I do. 15 Q. Do you have any reason to disagree with 16 that finding? 17 A. No. 18 Q. If we turn to the next highlight at the 19 bottom of that page going to the top of 275, could 20 you read that sentence for us? 21 A. "For social scientists and legal 22 scholars interested in analyzing RPV when only 23 ecological data are present, both approaches can 24 be relied upon as they lead to substantively 25 similar conclusions about the presence or absence</p>

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<p>1 of RPV."</p> <p>2 Q. Do you have any reason to disagree with</p> <p>3 that sentence?</p> <p>4 A. No.</p> <p>5 Q. And if I could trouble you to read the</p> <p>6 next highlighted sentence on 275.</p> <p>7 A. Here we go. "Beyond this, we</p> <p>8 demonstrate that both the iterative EI and the RxC</p> <p>9 methods produce results in line with individual</p> <p>10 level exit poll data."</p> <p>11 Q. I'd like to turn to the next page, 276.</p> <p>12 I think I may have missed the highlight in here.</p> <p>13 Do you see this first complete sentence of that</p> <p>14 first paragraph beginning with: Since the late</p> <p>15 '90s?</p> <p>16 A. I do.</p> <p>17 Q. Could you read that sentence for us?</p> <p>18 A. "Since the late 1990s, EI has been the</p> <p>19 benchmark method courts rely upon to evaluate RPV</p> <p>20 patterns in voting rights lawsuits."</p> <p>21 Q. Is that consistent with your</p> <p>22 understanding of the use of EI?</p> <p>23 A. It is.</p> <p>24 Q. And I believe I may have forgotten to</p> <p>25 ask you on 275, that sentence that begins with:</p>	<p>1 A. I don't recall.</p> <p>2 Q. Can you turn to Appendix 2 of Dr. Orey's</p> <p>3 report, I think is page 44, to confirm.</p> <p>4 A. Yes, it appears he did use both EI and</p> <p>5 RxC.</p> <p>6 Q. And in terms of that article I just</p> <p>7 showed you of Plaintiff's Exhibit 4, do you know</p> <p>8 the authors of this article?</p> <p>9 A. I've met Barreto and Collingwood I think</p> <p>10 maybe once, but it was a very, like, in passing at</p> <p>11 a conference thing. I don't know them, know them.</p> <p>12 Q. Are you familiar with their work?</p> <p>13 A. I am.</p> <p>14 Q. Do you know if those authors are</p> <p>15 reputable in the field?</p> <p>16 A. They are.</p> <p>17 Q. In paragraph 4 of your September report,</p> <p>18 I think you identify a different issue that you</p> <p>19 say can have serious implications for any analysis</p> <p>20 using ecological inference. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. You include a quote here. Would you</p> <p>23 mind reading that to us?</p> <p>24 A. Sure. "For example, if white voters</p> <p>25 tend to be conservative and most potential</p>
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<p>1 Beyond this we demonstrate that both...</p> <p>2 A. I read that.</p> <p>3 Q. Do you agree with that sentence?</p> <p>4 MR. WALLACE: Agree with? Object to the</p> <p>5 form of that.</p> <p>6 THE WITNESS: I agree it's what it says,</p> <p>7 yeah.</p> <p>8 Q. (By Mr. Cheung) Do you have any reason</p> <p>9 to disagree with that conclusion?</p> <p>10 A. I do not.</p> <p>11 Q. Thank you. Just one more on 283. Can</p> <p>12 you read that highlighted sentence on 283?</p> <p>13 A. "We also did not find any convincing</p> <p>14 evidence that EI will lead analysts to reach</p> <p>15 conclusions in favor of RPV."</p> <p>16 Q. Do you disagree with that sentence?</p> <p>17 A. No.</p> <p>18 Q. And so just to sum up here of the</p> <p>19 highlighted -- of the sentences that you've read</p> <p>20 from this article, you don't have any reason to</p> <p>21 disagree with those findings?</p> <p>22 A. Correct.</p> <p>23 Q. Do you know if Dr. Orey's report used</p> <p>24 the two EI methods, iterative and RxC, described</p> <p>25 in this article?</p>	<p>1 minority candidates are very liberal, strong</p> <p>2 minority candidates may elect not to run because</p> <p>3 they are ideologically out of step. A court that</p> <p>4 inferred disparate treatment from white voters'</p> <p>5 lack of support for minority Democrats relative to</p> <p>6 white Democrats would be doubly in error: White</p> <p>7 voting patterns may reflect ideological as well as</p> <p>8 valence differences between minority candidates</p> <p>9 and the white candidates whom the court treats as</p> <p>10 counterfactuals."</p> <p>11 Q. Thank you.</p> <p>12 And that quote is from a 2016 article by</p> <p>13 Elmendorf?</p> <p>14 A. Correct.</p> <p>15 Q. Do you consider that Elmendorf article</p> <p>16 to be a reliable source?</p> <p>17 A. I do.</p> <p>18 Q. So taking a look at the first part of</p> <p>19 that quote about minority candidates electing not</p> <p>20 to run because they may be ideologically out of</p> <p>21 step. Could you explain why a strong black</p> <p>22 minority candidate who is a conservative would</p> <p>23 decide not to run in Mississippi?</p> <p>24 A. Who's a conservative?</p> <p>25 Q. Uh-huh. (Affirmative response.)</p>

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<p>1 A. No.</p> <p>2 Q. And so if racially polarized voting did</p> <p>3 not exist, a black conservative likely would</p> <p>4 choose to run because they can win the white</p> <p>5 conservative votes?</p> <p>6 A. Maybe. But also if there was no</p> <p>7 incumbent, if there was an open seat, my hunch is</p> <p>8 that a black conservative against any Democrat</p> <p>9 would win regardless -- regardless of -- with the</p> <p>10 incumbency advantage no open seats. I'd love to</p> <p>11 see that election.</p> <p>12 Q. And so do you disagree with this quote</p> <p>13 that says: Strong minority candidates may elect</p> <p>14 not to run if white voters tend to be</p> <p>15 conservative?</p> <p>16 A. Strong minority candidates may elect not</p> <p>17 to run if -- can you say that again?</p> <p>18 Q. Yeah, please take a look at the first</p> <p>19 sentence of that quote.</p> <p>20 A. "If white voters tend to be conservative</p> <p>21 and most potential minority candidates are very</p> <p>22 liberal, strong minority candidates may elect not</p> <p>23 to run because of their ideological --</p> <p>24 So what you're asking, then, is what?</p> <p>25 Q. Do you agree with that sentence or do</p>	<p>1 Q. Are you aware of any black conservatives</p> <p>2 being elected to the Mississippi Supreme Court?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of conservative black</p> <p>5 candidates winning elections in Mississippi,</p> <p>6 generally?</p> <p>7 A. Winning elections, I don't know about</p> <p>8 generally. I can tell you not in District One.</p> <p>9 Q. Is it also possible that candidate's</p> <p>10 strategic decision making might result in an</p> <p>11 underestimation of the level of racially polarized</p> <p>12 voting?</p> <p>13 A. Well, I don't know, I mean, because if</p> <p>14 they're not on the ballot they can't be voted for.</p> <p>15 So I don't know how you estimate voting without</p> <p>16 voting. So I don't know how to answer that.</p> <p>17 Q. Is it possible that candidate's</p> <p>18 strategic decision making, such as electing not to</p> <p>19 run, might result in an underestimation of the</p> <p>20 level of white voter discrimination?</p> <p>21 A. Well, again, if they're not running --</p> <p>22 MR. WALLACE: Object to the form. I'm</p> <p>23 not sure that white voter discrimination is a term</p> <p>24 that's been used in this deposition so far. So I</p> <p>25 believe it's vague.</p>
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<p>1 you disagree with it?</p> <p>2 A. Yeah, I agree with that sentence.</p> <p>3 Q. And so why would strong minority</p> <p>4 candidates elect not to run if white voters are</p> <p>5 conservative and minority candidates are liberal?</p> <p>6 I don't understand that. I'd like for you to</p> <p>7 explain the sort of causation or the thinking</p> <p>8 behind this quote.</p> <p>9 A. Because they're not likely to win. And</p> <p>10 so the assumption is that the white voters are</p> <p>11 conservative and aren't going to vote for a black</p> <p>12 candidate. And so the -- and so they're going to</p> <p>13 take a pass because they know they have no chance</p> <p>14 of winning.</p> <p>15 Q. Why would a black conservative candidate</p> <p>16 not have a chance of winning?</p> <p>17 A. A black conservative candidate would</p> <p>18 have a chance of winning, sure. But this is</p> <p>19 talking about if white voters are conservative in</p> <p>20 most potential minority candidates are very</p> <p>21 liberal. Strong minority candidates may elect not</p> <p>22 to run.</p> <p>23 Q. And so the assumption here is that the</p> <p>24 minority candidate would be liberal?</p> <p>25 A. That's the assumption in the quote.</p>	<p>1 THE WITNESS: Sure, please clarify the</p> <p>2 vagueness.</p> <p>3 Q. (By Mr. Cheung) Sure. Is it possible</p> <p>4 that candidate's strategic decision making such as</p> <p>5 electing not to run might result in an</p> <p>6 underestimation of the level of racial bias among</p> <p>7 white voters?</p> <p>8 A. I'm not aware of -- I'm not aware of</p> <p>9 evidence that shows racial bias among white</p> <p>10 voters, so I don't know how to answer that</p> <p>11 question.</p> <p>12 Q. Okay. I have a copy of the Elmendorf</p> <p>13 article. I can provide you a copy of it if you'd</p> <p>14 like to see it, or I can read you a quote from it.</p> <p>15 A. You can read me a quote.</p> <p>16 Q. In that Elmendorf article it says:</p> <p>17 Candidate's strategic behavior in anticipation of</p> <p>18 white voter discrimination may lead courts to make</p> <p>19 grave errors about who is a high quality or low</p> <p>20 quality candidate and then consequence to badly</p> <p>21 understate white voter discrimination.</p> <p>22 A. Okay.</p> <p>23 Q. Do you have any reason to disagree with</p> <p>24 that statement?</p> <p>25 A. No.</p>

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<p>1 Q. So you would agree that strategic</p> <p>2 behavior by candidates may lead to an</p> <p>3 underestimate of racial bias among voters?</p> <p>4 A. May lead.</p> <p>5 Q. In work that you've done outside of this</p> <p>6 case, have you used regressions or other</p> <p>7 statistical methods?</p> <p>8 A. Like in my scholarly research?</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. And in reports you've prepared for other</p> <p>12 cases?</p> <p>13 A. I'm trying to think. I used -- did I do</p> <p>14 regression in Alabama? I don't think so. In</p> <p>15 Colorado, I think we did do some analysis in</p> <p>16 Colorado but that was the campaign finance case.</p> <p>17 Q. Do your reports in this case utilize</p> <p>18 regressions or any other statistical methods?</p> <p>19 A. I don't believe I do, no.</p> <p>20 Q. Did you perform any statistical analyses</p> <p>21 that you've omitted from the report?</p> <p>22 A. I did not.</p> <p>23 Q. I'd like to turn to sort of the partisan</p> <p>24 balance, if any, of nonpartisan elections?</p> <p>25 A. Can I use the bathroom first?</p>	<p>1 A. I do not. But that quote is consistent</p> <p>2 with my research, right, which I talked about</p> <p>3 earlier, that even though voters make more</p> <p>4 mistakes in nonpartisan elections, they're still</p> <p>5 able, overwhelmingly, to identify the correct</p> <p>6 candidate.</p> <p>7 Q. That research you just mentioned, that's</p> <p>8 not cited in your report?</p> <p>9 A. It is. It's paragraph 40.</p> <p>10 Q. That's the Bonneau and Cann source for</p> <p>11 2015?</p> <p>12 A. Correct. And so the Salter paragraph</p> <p>13 just says that the general thing that my co-author</p> <p>14 and I found in that book is also a perception that</p> <p>15 happens in this state as well.</p> <p>16 Q. And so your 2015 piece does not look at</p> <p>17 Mississippi in particular?</p> <p>18 A. It looks at all states that have</p> <p>19 elections. So Mississippi is part of it.</p> <p>20 Q. That's the same source that we discussed</p> <p>21 earlier in which you ran an experiment using ads</p> <p>22 that you created?</p> <p>23 A. Well, it wasn't a -- yes, that's a</p> <p>24 book -- so there are several chapters in that</p> <p>25 book. So we embedded surveys into -- we embedded</p>
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<p>1 Q. Sure.</p> <p>2 (Off the record.)</p> <p>3 Q. (By Mr. Cheung) Dr. Bonneau, we</p> <p>4 mentioned earlier that the ballots for Mississippi</p> <p>5 Supreme Court elections don't identify the</p> <p>6 partisan affiliation of Supreme Court Justice</p> <p>7 candidates; is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. You also testified earlier about how</p> <p>10 that omission of partisan information may lead to</p> <p>11 some voters misidentifying the candidate and</p> <p>12 voting for the wrong candidate; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And so in your January report, you</p> <p>15 include a quote that says -- I think paragraph 41:</p> <p>16 Folks who tend to vote Republican have found a way</p> <p>17 to learn the identity of judicial candidates</p> <p>18 favored by Republicans, and the same has been true</p> <p>19 for Democratic voters.</p> <p>20 Do you see that?</p> <p>21 A. That's a quote from Salter, yes.</p> <p>22 Q. Salter 2017 is an op-ed, right?</p> <p>23 A. Correct.</p> <p>24 Q. Do you know what evidence Salter uses to</p> <p>25 back up that claim?</p>	<p>1 experiments into national surveys, and so we have</p> <p>2 a nationwide survey that we bought time on to</p> <p>3 insert our own questions. And so there are</p> <p>4 Mississippians in that survey. How many, I can't</p> <p>5 tell you.</p> <p>6 Q. So you don't know the sample size of the</p> <p>7 Mississippians in that study?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And in that study you did not</p> <p>10 look at voters' awareness of the partisan</p> <p>11 affiliations of candidates running for the</p> <p>12 Mississippi Supreme Court?</p> <p>13 A. Not specifically that, no.</p> <p>14 Q. In paragraph 3 of your September report</p> <p>15 you discuss some efforts by Latrice Westbrooks'</p> <p>16 campaign to associate herself with Benny Thompson,</p> <p>17 Joe Biden and Mike Espy; is that right?</p> <p>18 A. I do.</p> <p>19 MR. WALLACE: Paragraph what?</p> <p>20 MR. CHEUNG: Three of the September</p> <p>21 report.</p> <p>22 Q. (By Mr. Cheung) You then conclude that</p> <p>23 it was clear to those following the race that</p> <p>24 Judge Westbrooks was a member of the Democratic</p> <p>25 party and her campaign was assisted by high</p>

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<p style="text-align: right;">Page 130</p> <p>1 profile Mississippi Democrats. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Is that conclusion based on those</p> <p>4 campaign materials that you identify or is there</p> <p>5 something else to that?</p> <p>6 A. No, my conclusion about how she tried to</p> <p>7 align herself with high profile Democrats is based</p> <p>8 on the evidence cited there how she associated</p> <p>9 with high profile Democrats.</p> <p>10 Q. Do you agree that there are voters who</p> <p>11 cast a ballot in the 2020 election who may not</p> <p>12 have seen that messaging?</p> <p>13 A. Sure.</p> <p>14 Q. But every voter who receives a ballot</p> <p>15 sees the omission of a party affiliation next to</p> <p>16 the candidate's name.</p> <p>17 A. Correct.</p> <p>18 Q. And in terms of the Mississippi</p> <p>19 Democrats that you identified Ms. Westbrooks as</p> <p>20 associating herself with, were they themselves the</p> <p>21 preferred candidate for black voters in their</p> <p>22 races?</p> <p>23 A. I don't know that. I'm assuming, but I</p> <p>24 don't know.</p> <p>25 Q. Do you have any reason to doubt that?</p>	<p style="text-align: right;">Page 132</p> <p>1 voters, which I think is a given. But four years</p> <p>2 prior, Posey ran as a Democratic candidate and</p> <p>3 defeated Haley Barbour's nephew, and he won as a</p> <p>4 Democrat each time he served in the State Senate.</p> <p>5 So if Orey had analyzed the 2007 race,</p> <p>6 he probably would have found that Posey was the</p> <p>7 black preferred candidate. But then four years</p> <p>8 later, all of a sudden, Posey is not the black</p> <p>9 preferred candidate. Same dude, same preferences,</p> <p>10 the only difference is one year he was a Democrat,</p> <p>11 the other year he was a Republican. Which, to me,</p> <p>12 shows the importance of political party, when you</p> <p>13 have somebody who's no different except the party</p> <p>14 ID after their name.</p> <p>15 Q. And so you're saying that because Posey</p> <p>16 was a black preferred candidate in '07 as a</p> <p>17 Democrat and then he suddenly lost black voter</p> <p>18 support in 2011 as a Republican, partisanship must</p> <p>19 be the reason. Why?</p> <p>20 A. It's the most likely reason.</p> <p>21 Q. You stand by your conclusion that the</p> <p>22 only difference in the two elections was his</p> <p>23 political party?</p> <p>24 A. As far as I know, unless someone can</p> <p>25 tell me there was another difference between the</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I do not.</p> <p>2 Q. One thing earlier, I think you mentioned</p> <p>3 some correspondence you had with someone about</p> <p>4 whether or not there are criticisms of the EI</p> <p>5 method that persist?</p> <p>6 A. Correct.</p> <p>7 Q. Are you able to provide that</p> <p>8 correspondence to us?</p> <p>9 A. I think I can, yeah. I e-mailed --</p> <p>10 MR. WALLACE: We will take it under</p> <p>11 consideration. I think you're probably entitled</p> <p>12 to have it but we need to talk about that.</p> <p>13 MR. CHEUNG: Okay. Thanks, Mike.</p> <p>14 Q. (By Mr. Cheung) I'd like to turn to</p> <p>15 paragraph 5 of your September report. I think</p> <p>16 there you discuss an example of a candidate named</p> <p>17 Lynn Posey. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. What is the significance of this</p> <p>20 example?</p> <p>21 A. Well, to me this shows how it's -- how</p> <p>22 party is a pretty important factor. So if we take</p> <p>23 this race here. We have Lynn Posey who defeated</p> <p>24 Addie Green. And Professor Orey talked about how</p> <p>25 Green was the preferred candidate of the black</p>	<p style="text-align: right;">Page 133</p> <p>1 two elections.</p> <p>2 Q. Is Posey a white candidate?</p> <p>3 A. Yes.</p> <p>4 Q. In 2007, his opponent, Charles Barbour,</p> <p>5 was he white?</p> <p>6 A. Yes.</p> <p>7 Q. In 2011, Addie Green, was she black?</p> <p>8 A. Yes.</p> <p>9 Q. So the races of the candidates, of the</p> <p>10 opponent, also changed between 2007 and 2011?</p> <p>11 A. Correct.</p> <p>12 Q. Can you rule out the possibility that</p> <p>13 black voters voted for Addie Green because she was</p> <p>14 a black candidate?</p> <p>15 A. Well, that would have to assume that the</p> <p>16 black preferred candidate, Posey, all of a sudden</p> <p>17 would not have been black preferred, right? So</p> <p>18 what would cause him to lose that preference. I</p> <p>19 would argue, right, that it's party. That had</p> <p>20 Posey run as a Democrat in 2011, he would have</p> <p>21 been the black preferred candidate. But because</p> <p>22 he ran as a Republican, he was not.</p> <p>23 Q. Do you have any reason to think that if</p> <p>24 it were a primary race between Green and Posey,</p> <p>25 that Posey would have won the votes of black</p>

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<p>1 voters?</p> <p>2 A. Well, he did in 2007. So unless you can</p> <p>3 tell a story why he would all of a sudden lose</p> <p>4 them. I mean, to me, this gets into the whole</p> <p>5 black candidate versus black preferred. Posey was</p> <p>6 a white candidate. He was the black preferred</p> <p>7 candidate in 2007. If he were running in a</p> <p>8 Democratic primary, my assumption would be he</p> <p>9 would still be the black preferred candidate.</p> <p>10 This is akin, I think, to the Ceola James</p> <p>11 situation, where she was a black candidate but she</p> <p>12 was not the black preferred candidate. Again,</p> <p>13 it's hypothetical. We don't know. But what we do</p> <p>14 know is Posey had a history of being a member of</p> <p>15 the Democratic party, of winning as a Democrat,</p> <p>16 winning with black support, then all of a sudden</p> <p>17 now he loses in.</p> <p>18 Q. And so between 2007 and 2011, Posey's</p> <p>19 party affiliation changed?</p> <p>20 A. Correct.</p> <p>21 Q. You would also agree that the race of</p> <p>22 his opponent also changed?</p> <p>23 A. Well, no, the race of his opponent</p> <p>24 stayed the same. But he was running against a</p> <p>25 black candidate in 2011 rather than a white</p>	<p>1 necessarily assume that. You know, I think that's</p> <p>2 a -- I think party changes like that, voters tend</p> <p>3 to be pretty cynical about. If Joe Manchin would</p> <p>4 have changed, right, people would be like, oh,</p> <p>5 yeah. Well, he's already that anyway.</p> <p>6 So I don't know if I -- I mean, it's</p> <p>7 possible for some voters, sure, but I don't know</p> <p>8 if that's a widespread thing.</p> <p>9 Q. So your view is that if Joe Manchin</p> <p>10 became a Republican, he wouldn't lose any</p> <p>11 Democratic votes?</p> <p>12 A. He would lose some Democratic votes,</p> <p>13 sure. But he'd do it, right, because he knows he</p> <p>14 can't win as a Democrat so he wouldn't care.</p> <p>15 Q. In paragraph 7 of your September report,</p> <p>16 you note that racial polarization did not prevent</p> <p>17 a black candidate from winning the Democratic</p> <p>18 primary?</p> <p>19 A. Correct.</p> <p>20 Q. But winning the Democratic primary</p> <p>21 doesn't mean that the candidate ultimately wins</p> <p>22 elected office, right?</p> <p>23 A. Correct.</p> <p>24 Q. And so a black preferred candidate can</p> <p>25 win the Democratic primary and still ultimately be</p>
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<p>1 candidate in 2007.</p> <p>2 Q. All right.</p> <p>3 A. But Addie Green's race did not change</p> <p>4 between '07 and '11.</p> <p>5 Q. And when candidates switch parties, do</p> <p>6 their positions on policy issues typically change?</p> <p>7 A. You know, not really. I mean, the</p> <p>8 evidence that I've read suggests that basically</p> <p>9 it's a -- they're just realigning, right, to be</p> <p>10 either more similar, right, to the party that</p> <p>11 represents their views or because they think it's</p> <p>12 an electoral advantage.</p> <p>13 But, you know, when Jim Jeffreys went</p> <p>14 from a Republican independent, his party positions</p> <p>15 didn't change. If Joe Manchin would change from</p> <p>16 Democrat to an independent Republican, his</p> <p>17 position wouldn't change. He would just feel like</p> <p>18 it was either, A, to his electoral advantage to do</p> <p>19 that, or because he feels that the new party that</p> <p>20 he changed into better reflects his views.</p> <p>21 Q. So even if the candidate's actual policy</p> <p>22 views don't change, does the change in party</p> <p>23 affiliation signal to voters that their policy</p> <p>24 positions may have changed?</p> <p>25 A. It might. I don't think we can</p>	<p>1 unsuccessful because of opposition from white</p> <p>2 voters in the general election?</p> <p>3 A. Yes.</p> <p>4 Q. In paragraph 8 you have a quote about</p> <p>5 racial polarization in the primary. Can you</p> <p>6 explain the significance of that quote, please?</p> <p>7 A. Sure. So what that quote does, is it</p> <p>8 talks about how -- you're talking about preference</p> <p>9 for one candidate relative to the other, so it's</p> <p>10 all relational. It's not necessarily about any</p> <p>11 kind of absolute support. So it's not a signal of</p> <p>12 how much minority voters like the preferred</p> <p>13 candidates, it's just how much do they like the</p> <p>14 preferred candidate relative to who that preferred</p> <p>15 candidate is running against.</p> <p>16 Q. Why is that fact relevant to your</p> <p>17 report?</p> <p>18 A. Well, I think that it's relevant to</p> <p>19 report because it suggests that the candidates</p> <p>20 matter, that it's not just some kind of racial</p> <p>21 signal, right? So it's not just whether or not</p> <p>22 you have a black candidate, right, but it's about</p> <p>23 who it is relative to their opponents.</p> <p>24 Q. But that point about relative preference</p> <p>25 is true of all elections, right, not just</p>

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<p>1 primaries?</p> <p>2 A. True.</p> <p>3 Q. I just want to make sure I'm</p> <p>4 understanding. Are you suggesting that we</p> <p>5 shouldn't look at election results to measure</p> <p>6 racial polarized voting?</p> <p>7 A. No.</p> <p>8 Q. I'd like to turn to your January report</p> <p>9 for a moment, in paragraph 38 in particular.</p> <p>10 A. Okay.</p> <p>11 Q. You cite a source from 1960 for the</p> <p>12 proposition that one of the best predictors of how</p> <p>13 individuals will vote is partisan identification.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you know how the authors of that 1960</p> <p>17 source reached that conclusion?</p> <p>18 MR. WALLACE: All right. I'm going to</p> <p>19 interpose the same objection as being outside the</p> <p>20 scope of the Court's order, but he may respond.</p> <p>21 THE WITNESS: Let me just say, it's an</p> <p>22 EG, right? So, for example, this is as a</p> <p>23 canonical study of voting, right, of the American</p> <p>24 voter was done through survey research, was a</p> <p>25 large national survey. Everything that's come</p>	<p>1 Q. Okay. And since 1960, as we discussed</p> <p>2 earlier, black and white voters have essentially</p> <p>3 switched parties and affiliation?</p> <p>4 A. They have.</p> <p>5 Q. And after that switch in party</p> <p>6 identification, black and white voters continued</p> <p>7 to vote in separate blocks; is that right?</p> <p>8 A. For different political parties. Well,</p> <p>9 blacks overwhelmingly vote for the Democratic</p> <p>10 party, whites are more split, yes.</p> <p>11 Q. Does that history tell you anything</p> <p>12 about why the parties are split along racial lines</p> <p>13 today?</p> <p>14 MR. WALLACE: I think it's asked and</p> <p>15 answered, but go ahead.</p> <p>16 THE WITNESS: Does what history tell me?</p> <p>17 Q. (By Mr. Cheung) The fact that the</p> <p>18 parties are still divided by race despite the</p> <p>19 change in party identification.</p> <p>20 A. I don't know that I would say the</p> <p>21 parties are divided by race. I would say that</p> <p>22 blacks are overwhelmingly members of and vote for</p> <p>23 the Democratic party and whites are more mixed. I</p> <p>24 think that's consistent.</p> <p>25 Q. I'd like to turn back to Dr. Orey's</p>
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<p>1 since that canonical site has found the same</p> <p>2 thing. So it looks weird because it's 1960. When</p> <p>3 I was writing the report it was a convenient</p> <p>4 citation that I had off the top of my head as</p> <p>5 opposed to saying what the newest one was that</p> <p>6 found that same that they did in 1960.</p> <p>7 Q. (By Mr. Cheung) Thank you. Appreciate</p> <p>8 that. But do you know how the authors came to</p> <p>9 that conclusion?</p> <p>10 A. Surveys.</p> <p>11 Q. Surveys asking who?</p> <p>12 A. Of voters, right, of asking voters like</p> <p>13 party ID, who did you vote for, things like that.</p> <p>14 Q. Do you know if the authors considered</p> <p>15 the possibility that partisan identification</p> <p>16 itself is related to a voters race?</p> <p>17 A. Partisan -- I'm sure they did. I can't</p> <p>18 remember the specifics.</p> <p>19 Q. Do you know if the authors of that</p> <p>20 survey compared the strength of partisanship</p> <p>21 versus race as a predictor?</p> <p>22 A. No, I mean, they wouldn't have done</p> <p>23 that. If they did, it would have been, you know,</p> <p>24 using data that is now 70 years old. So, of</p> <p>25 limited utility.</p>	<p>1 report again, pages 12 to 14 that you reviewed</p> <p>2 earlier.</p> <p>3 A. Okay.</p> <p>4 Q. I think you testified earlier that you</p> <p>5 don't dispute Dr. Orey's calculations and his</p> <p>6 data; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. Do you agree that in these by biracial</p> <p>9 general elections that Dr. Orey sampled, he</p> <p>10 correctly identified which candidates were black?</p> <p>11 A. Yes.</p> <p>12 Q. And do you agree that he correctly</p> <p>13 identified the candidates that were preferred by</p> <p>14 black voters?</p> <p>15 A. Yes.</p> <p>16 Q. And do you agree that in these general</p> <p>17 elections in which a black candidate ran against a</p> <p>18 white candidate, black voters generally prefer the</p> <p>19 black candidate?</p> <p>20 MR. WALLACE: Object to the form</p> <p>21 generally as vague, but he may answer.</p> <p>22 THE WITNESS: Yes.</p> <p>23 Q. (By Mr. Cheung) Black voters usually</p> <p>24 preferred the black candidate?</p> <p>25 A. Yes.</p>

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<p>1 Q. Did white voters usually prefer the</p> <p>2 white candidate?</p> <p>3 A. Yes.</p> <p>4 Q. And in most of these elections involving</p> <p>5 black and white candidates, did the candidate</p> <p>6 preferred by black voters lose?</p> <p>7 A. In which tables?</p> <p>8 Q. Looking at all three tables, Tables 1,</p> <p>9 2, and 3.</p> <p>10 A. Well, in Tables 1 and 2, yes. But in</p> <p>11 Table 3, it's much more split.</p> <p>12 Q. What if we look at all three tables in</p> <p>13 the aggregate?</p> <p>14 A. Well, in the aggregate -- so we have two</p> <p>15 elections, then we have five, so it's seven. So</p> <p>16 we have one and seven there.</p> <p>17 So 5 out of 10 and 1 out of 7, so that's</p> <p>18 a total of 6 out of 17.</p> <p>19 Q. Could you do that count for me again?</p> <p>20 A. Sure. In Table 1 we have 0 out of 2.</p> <p>21 Q. Right.</p> <p>22 A. In Table 2 we have 1 out of five, so 1</p> <p>23 out of 7. In Table 3 we have 10 elections and I</p> <p>24 count 5 out of 10.</p> <p>25 Q. And that's the number of instances of --</p>	<p>1 A. Well, if they're satisfied with the</p> <p>2 incumbent.</p> <p>3 Q. Any other considerations?</p> <p>4 A. Not that I can think of off the top.</p> <p>5 Usually if you have an incumbent who's vulnerable,</p> <p>6 they will be challenged. And what makes an</p> <p>7 incumbent vulnerable could be an incumbent who's</p> <p>8 out of step with the electorate, an incumbent who</p> <p>9 can't do their job well or anything else.</p> <p>10 Q. But it's not because the incumbent is</p> <p>11 black that there wouldn't be a challenge.</p> <p>12 A. I don't understand how that would work.</p> <p>13 Q. Right. I'm just trying to understand</p> <p>14 your answer that black incumbents are not at risk</p> <p>15 of losing their seats?</p> <p>16 A. Not in District One, at least they</p> <p>17 haven't been.</p> <p>18 Q. So your view is that black incumbents in</p> <p>19 District One have no risk of being challenged?</p> <p>20 A. Well, there's always a risk of being</p> <p>21 challenged, they just have never been challenged.</p> <p>22 Q. And that's based on a sample of how many</p> <p>23 elections?</p> <p>24 A. Three or four.</p> <p>25 Q. Would you agree that unopposed judicial</p>
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<p>1 A. The black candidate winning.</p> <p>2 Q. So in most of the 17 elections, the</p> <p>3 black candidate lost?</p> <p>4 A. In more than half, yes.</p> <p>5 Q. In paragraph 28 of your January report</p> <p>6 you say that incumbents overwhelmingly win their</p> <p>7 seats and it's only the white judges who could</p> <p>8 potentially lose their seats because they're being</p> <p>9 challenged. You see that?</p> <p>10 A. I do.</p> <p>11 Q. Is that conclusion based on Justice King</p> <p>12 running unopposed in his reelections?</p> <p>13 A. Yes.</p> <p>14 Q. Is there any other fact you're relying</p> <p>15 on for that conclusion?</p> <p>16 A. Well, no, because only the white judges</p> <p>17 are being challenged. So if you're not challenged</p> <p>18 you can't lose your seat.</p> <p>19 Q. Is your view that black incumbents have</p> <p>20 no electoral risk?</p> <p>21 A. If they do, I haven't seen it.</p> <p>22 Q. What are some factors that influence</p> <p>23 whether or not a challenger emerges?</p> <p>24 A. Whether or not they can win.</p> <p>25 Q. Anything else?</p>	<p>1 elections are not that unusual?</p> <p>2 A. Would I agree -- yes, I would.</p> <p>3 Q. And it's especially --</p> <p>4 A. No, no, sorry, I would disagree with</p> <p>5 that, that uncontested races are not the --</p> <p>6 contested races are the norm.</p> <p>7 Q. What about specifically in the context</p> <p>8 of nonpartisan elections in which there's an</p> <p>9 incumbent?</p> <p>10 A. I believe contested races are still the</p> <p>11 norm.</p> <p>12 Q. So in a 2006 article that you wrote</p> <p>13 titled Does Quality Matter, you provide the rate</p> <p>14 of uncontested elections from 1990 to 2000. And</p> <p>15 you say that the rate for uncontested nonpartisan</p> <p>16 elections is 42.02 percent. Does that sound right</p> <p>17 to you?</p> <p>18 A. Yes. That data is 22 years old.</p> <p>19 Q. Now talking about Justice King,</p> <p>20 specifically. We talked about the fact that he</p> <p>21 didn't draw a challenger, maybe in part because a</p> <p>22 challenger thought they would lose, right?</p> <p>23 A. He's never drawn a challenger.</p> <p>24 Q. Could part of that be because Justice</p> <p>25 King is perceived as a strong candidate?</p>

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<p>1 A. Yes.</p> <p>2 Q. Also potentially because he's an</p> <p>3 incumbent?</p> <p>4 A. Sure, just as Justice Griffis was.</p> <p>5 Q. When he was up for reelection, was</p> <p>6 Justice King always the only black justice on</p> <p>7 Mississippi's Supreme Court?</p> <p>8 A. I believe that's true.</p> <p>9 Q. Is it possible that there was a</p> <p>10 reluctance to be perceived as mounting a campaign</p> <p>11 to make the Mississippi Supreme Court an all white</p> <p>12 court?</p> <p>13 MR. WALLACE: Object to the form.</p> <p>14 Reluctance by whom?</p> <p>15 THE WITNESS: That was going to be my</p> <p>16 question.</p> <p>17 Q. (By Mr. Cheung) By candidates or</p> <p>18 parties endorsing candidates, relevant political</p> <p>19 actors.</p> <p>20 A. No. If you think you can win you run.</p> <p>21 I don't -- if I'm a lower court judge or I want to</p> <p>22 be on the Mississippi Supreme Court and I think I</p> <p>23 can win, then I'm going to win. I'm going to go</p> <p>24 run and win.</p> <p>25 Q. You testified earlier that a judicial</p>	<p>1 2012 Justice Waller drew a challenge, and in 2020,</p> <p>2 Justice Griffis drew a challenge.</p> <p>3 Q. And those candidates who drew a</p> <p>4 challenge, they still won, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. But are there differences between</p> <p>7 2008, 2012 and 2020 that could influence whether</p> <p>8 or not a challenger emerges?</p> <p>9 A. Sure, yeah.</p> <p>10 Q. Some of that might be candidate-specific</p> <p>11 characteristics, because we're talking about</p> <p>12 different incumbents?</p> <p>13 A. Sure.</p> <p>14 Q. Macro-environment conditions like crime</p> <p>15 rates might be different?</p> <p>16 A. Yep.</p> <p>17 Q. You did not control for those</p> <p>18 differences in your comparison of Justice King to</p> <p>19 Justice Smith?</p> <p>20 A. No. But again, we also have Justice</p> <p>21 Waller and Justice Griffis who were the same</p> <p>22 years. So those things would be the same. The</p> <p>23 only difference is the candidates.</p> <p>24 Q. We talked earlier about, you know, the</p> <p>25 issue of sample size. Do you have a view on how</p>
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<p>1 candidate, although nonpartisan, often receives</p> <p>2 the backing of a political party.</p> <p>3 A. Correct.</p> <p>4 Q. And so is it possible that a political</p> <p>5 party might be reluctant to support a campaign</p> <p>6 that makes the Supreme Court an all white court?</p> <p>7 A. Well, maybe the party of Justice King,</p> <p>8 the Democratic party would be, but I don't</p> <p>9 understand why a Republican party would care about</p> <p>10 that. It's about winning elections. It's not</p> <p>11 about how it looks.</p> <p>12 Q. You use the Justice King example, the</p> <p>13 contrast with Justice Smith who lost his</p> <p>14 reelection in 2008, right?</p> <p>15 A. Correct.</p> <p>16 Q. Justice King's elections were in 2012</p> <p>17 and 2020.</p> <p>18 A. Correct.</p> <p>19 Q. In terms of the likelihood of there</p> <p>20 being a challenger emerging, could be there some</p> <p>21 meaningful differences between 2008, 2012 and</p> <p>22 2020?</p> <p>23 A. Sure, but when Justice King was on the</p> <p>24 ballot in 2012 and 2020, he was on the ballot with</p> <p>25 another person who did draw a challenge. So in</p>	<p>1 many elections to look at would be a sufficient</p> <p>2 sample size for you to be able to draw conclusions</p> <p>3 from these patterns?</p> <p>4 A. I would like to -- I mean, I analyzed</p> <p>5 all of the elections. I would love there to have</p> <p>6 been more elections, but I can't analyze elections</p> <p>7 that aren't there.</p> <p>8 Q. But with the elections that you do have,</p> <p>9 in terms of Justice King's reelections not drawing</p> <p>10 a challenger, the fact that we're only talking</p> <p>11 about three, maybe four elections, does that</p> <p>12 affect the confidence you have in the patterns</p> <p>13 that you're noticing?</p> <p>14 A. No, because it's the only patterns I can</p> <p>15 observe. So I -- you know, if we have another 10</p> <p>16 years of data might my conclusions change, sure.</p> <p>17 I mean that's what happens when you get more data</p> <p>18 and you get more elections. But, you know, when</p> <p>19 you're looking at Appendix A, what you see is</p> <p>20 every incumbent wins except for one, and every</p> <p>21 incumbent is challenged except for Justice King.</p> <p>22 Now, I think that's informative.</p> <p>23 Q. You testified earlier that you were</p> <p>24 deposed in the Alabama case?</p> <p>25 A. I was.</p>

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<p>1 Q. Do you recall testifying in that case, 2 quote: When we are dealing with a small number of 3 elections, many of which can be decided on 4 idiosyncratic factors, I don't think we can make a 5 conclusion like that. 6 A. Well, I don't know what "like that" 7 meant, what that's referring to. In general, that 8 is something I would say depending upon what the 9 conclusion is. 10 Q. I'm happy to show you the transcript if 11 you would like for you to see the context. 12 A. If you want to, that's up to you. 13 (Exhibit 5 marked for identification.) 14 Q. (By Mr. Cheung) So that's now 15 Plaintiffs' Exhibit 5. I'd like to point you to 16 page 37 of the transcript. Starting from line 16 17 and going down to page 38, line 11. 18 A. Okay. 19 Q. Would you agree in the Alabama case you 20 concluded that there wasn't enough information to 21 draw a conclusion about patterns in a small sample 22 size of elections? 23 A. In that case -- hold on. I've got to go 24 back further here. So the question is: Does 25 that -- taken in isolation, does that suggest that</p>	<p>1 patterns with conclusiveness. So, again, if I had 2 10 more years of data and we had this case 10 3 years from now, might my conclusions be different, 4 sure. 5 Q. Do you know if apart from Justice King 6 other black justices on the Mississippi Supreme 7 Court have been challenged on their reelection 8 campaigns? 9 A. Yeah, Justice Graves was challenged in 10 2004. 11 Q. And what about before that? 12 A. I only go back to 2000 in this report. 13 I mean, I have data going back further than that, 14 but I didn't use it for this report, so I can't -- 15 Q. In preparing your reports in this case, 16 did you also review the report prepared by Justice 17 Diaz? 18 A. I did. 19 Q. In his report he noted that Justice Fred 20 Banks ran in contested elections in '91 and '96. 21 Does that sound right to you? 22 A. Yes. 23 Q. So you mentioned Justice Graves drawing 24 a challenger in 2004; is that right? 25 A. Yes.</p>
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<p>1 the differential in that particular race was not 2 party because they were in the same party, but the 3 differentiator or one differentiator was race? 4 I said: I don't think we have enough 5 information to conclude. 6 I don't think we have enough information 7 to conclude what the differentiator is. 8 Q. What do you see as a difference between 9 the Alabama example and your ability to draw 10 conclusions about Justice King's reelection? 11 A. Well, I believe we have one -- we're 12 looking at one election, or in the Alabama case at 13 this part -- we have an example of race where 14 there are four candidates. So I think there are 15 fewer elections when I made that there. 16 And, again, that's right, it could be 17 any number of things. I think I say the same 18 thing in the report here. It could be any number 19 of things that differentiates candidates. I think 20 the evidence is the most consistent with party. 21 But, yeah, I mean, given the small number of 22 elections it's impossible to say. Just like it's 23 impossible to say it's race, it's impossible to 24 say it's gender. The smaller the number of races 25 we have the more difficult it is to establish</p>	<p>1 Q. I think in paragraph 3 of your January 2 report you said that a black justice has not been 3 challenged since 2000. 4 A. That should be 2004. That is a typo. 5 Q. Okay. Thank you. And then in the 6 paragraph after that, in paragraph 31 of the 7 January report, you say that black candidates 8 challenging an incumbent receive an average of 9 46-and-a-half percent of the vote while white 10 challengers receive an average of 42-and-a-half 11 percent. Do you see that? 12 A. Uh-huh. (Affirmative response.) 13 Q. Just for clarity of the record, which 14 elections did you draw those numbers from? 15 A. That is from the 2000 and 2020. 16 Q. Did you perform any statistical analysis 17 here to determine whether that difference is 18 statistically significant? 19 A. I did not. 20 Q. You did not run a T test or any other 21 type of test? 22 A. No, my hunch is that there's not enough 23 cases to get any kind of precision. 24 Q. And so you're saying given the sample 25 size if you had run a test on the difference, the</p>

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<p>1 result likely would not be statistically 2 significant?</p> <p>3 A. Well, I mean, so we can talk about 4 statistical significance in the context of 5 universe of cases. So statistical significance is 6 used, right, to make inferences from a sample to a 7 population. How likely is it that the data we 8 have in our sample is reflective of the broader 9 population. Here we have the full population. We 10 have every election in District One. So we don't 11 need use an inferential statistic like statistical 12 significance because we observe all the data, and 13 so that is a true data point. We're not trying to 14 take these elections and say how reflective are 15 they of this larger thing. So that does not -- so 16 statistical significance doesn't really apply here 17 because it is significant because it is true.</p> <p>18 Q. So how do you know the difference here 19 is not just random noise?</p> <p>20 A. Well, it can't be random noise because 21 I'm not making -- I'm not inferring from a sample 22 of elections to a larger population. That's when 23 you're worried about random noise, right, when 24 you're trying to do -- I've got 100 people here. 25 I want to know are these 100 people reflective of</p>	<p>1 assigned to it.</p> <p>2 A. But there can't be a statistical test 3 assigned to it. So it's notable because it's, I 4 guess -- you could say 4 percent is not notable. 5 That's -- okay. We can quibble about that, that, 6 that's fine. But you can't say that, like, this 7 difference isn't real, because it is real.</p> <p>8 Q. I guess my question is how do you 9 determine whether or not that difference is real?</p> <p>10 A. Because it's all the cases we have. So 11 let me -- all right. So let me back up here. All 12 right. So let's think about -- thought this was a 13 nonteaching day.</p> <p>14 So let's think about when we sample 15 things. We use T tests and inferential 16 statistics, right, when we're trying to take 17 things from a sample to the broad population, 18 which I've said. So I'm trying to understand -- 19 I'm going to ask 100 people a question, you know, 20 is the country on the right track or wrong track. 21 And I'm going to get some data, and that data is 22 going to be 56 percent say wrong track, 40 percent 23 say right track, 4 percent say off track or 24 whatever. Now, my question is, I know that's the 25 rate among these 100 people, because I've asked</p>
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<p>1 1,000 people. We have eight elections, or however 2 many elections we have here. That's all we have. 3 We're not trying to generalize to other elections. 4 And so it's actual data. It can't be random 5 noise.</p> <p>6 Now, the causes -- we can talk about the 7 causes. But the fact that African Americans 8 states with (inaudible) candidates in District One 9 received this percentage of the vote and white 10 candidates received that percentage of vote is 11 true. It's fact. There's nothing to infer.</p> <p>12 Q. But you would agree that there would be 13 some natural variation in results even if it's the 14 same candidates running against each other?</p> <p>15 A. Sure, but that doesn't change the fact 16 that these are true figures. Sure, over time or 17 over different elections vote totals vary. They 18 go up, they go down. But from 2000 to 2020, the 19 fact is that African American candidates who 20 challenge incumbents do better than white 21 candidates who challenge incumbents.</p> <p>22 Q. We may be talking in circles here. I'm 23 trying to understand here why you think this 24 difference is of a sufficient magnitude to be 25 notable when there's not a statistical test</p>	<p>1 them and I've calculated that. That's what I've 2 got here, right, with these data. Now if I want 3 to infer to a national sample or to the State of 4 Mississippi or to something outside that, now I 5 need to know how representative are these 100 6 people of that population. And if they're 7 representative, then we can make an inference. If 8 they're not representative, then we can't or we'll 9 have a less precise inference. These election 10 results are those 100 people. Like, we know the 11 differences there. That 58 percent I get applies 12 to those 100 people without question. It's a real 13 number. It's a real difference.</p> <p>14 So because we're dealing here with the 15 population where I've done every election over 16 this time period, there's no statistical test 17 because this difference is an actual difference. 18 You can say it's small, you can say it's not 19 relevant, but you can't say it's not true. Does 20 that make sense?</p> <p>21 Q. And so -- I feel like part of what 22 you're saying here is that you think this 23 difference is predicative of future elections?</p> <p>24 A. No.</p> <p>25 Q. Are you saying that?</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. No. What I'm saying is that exactly 2 what I said, in the elections in these districts, 3 African American candidates who challenge 4 incumbents do four points better than white 5 candidates who challenge incumbents. So if the 6 argument is that incumbents have such a huge 7 advantage, right, and we would agree there's an 8 incumbency advantage, what ends up happening is 9 actually a black candidate challenging an 10 incumbent does better than a white candidate 11 challenging an incumbent. 12 Which shows, one, that incumbency is 13 powerful. But it also shows that, you know, race 14 probably isn't as powerful. 15 Q. And so you're now relying on this 16 difference to make a judgment about the likelihood 17 of black candidates winning in District One in the 18 future. 19 A. I didn't say that, no. 20 Q. And about sort of the size of the 21 difference, are you saying that this difference is 22 notable, of 4 percent? 23 A. Yes. 24 Q. How do you determine whether or not the 25 difference is notable?</p>	<p style="text-align: right;">Page 160</p> <p>1 4 percent difference to variations or differences 2 in other elections to assessment magnitude? 3 A. No. 4 Q. Okay. I think in the paragraph after 5 that, paragraph 32, you say that you compared the 6 vote share, I think, of similarly situated African 7 American candidates to white candidates. 8 A. That's just a summary of paragraph 31. 9 Q. Okay. How did you determine that the 10 African American candidates were similarly 11 situated? 12 A. They were all challenging incumbents. 13 Q. But you did not control for other 14 differences in their elections? 15 A. No, they were all challenging 16 incumbents. 17 Q. So by similarly situated -- I just want 18 to confirm, similarly situated just means the fact 19 that they were challenging the incumbent? 20 A. Correct. 21 Q. I'd like to turn to paragraph 50 of the 22 January report. You note that Banks and 23 Westbrook lost even though Obama and Espy won the 24 majority of the vote in District One. Do you see 25 that?</p>
<p style="text-align: right;">Page 159</p> <p>1 A. It's 4 percent. Again, we can quibble. 2 It's just the opinion. But you can say 4 percent, 3 whatever, that's nothing. But you've going from 4 42 to 46, who cares. I would say, well, the 5 standard for competitive elections in political 6 science tends to be elections that are decided by 7 55 percent or less. And so what you're doing here 8 is you're going from an election that's less 9 competitive to election that's more competitive. 10 When you have a more competitive election, that 11 gives the challenger a better chance of winning 12 than in a less competitive election. And if you 13 look at over time when you see competitive 14 elections, competitive elections beget other 15 competitive elections. So if you have a history 16 of competitive elections in a district, you're 17 more likely to see competitive elections in the 18 future, right? Because it signals other 19 candidates that there's actually a shot of taking 20 this person. We might be able to win. You don't 21 get that, right, when you always are in the area 22 where you're not getting competitive elections 23 where the challenge of the incumbents is getting 24 their butt kicked. 25 Q. In your report you did not compare that</p>	<p style="text-align: right;">Page 161</p> <p>1 A. I do. 2 Q. Would you agree that in general for 3 purposes of measuring racially polarized voting, 4 it's more useful to look at election data 5 pertaining to the actual office being challenged? 6 A. State that again. 7 Q. In general, would you agree with the 8 view that for purposes of measuring racially 9 polarized voting, election data from the actual 10 office being challenged is more useful than 11 election data from other races? 12 A. Paragraph 50 doesn't talk about racially 13 polarized voting. It talks about just election 14 results and how people perform. So I don't have 15 an opinion on racially polarized voting and the 16 offices looked at. 17 Q. Would you agree that in terms of 18 elections for different offices there may be 19 different political dynamics that affect voter 20 behavior? 21 A. Yes. 22 Q. And so Obama was running nationally and 23 statewide in Mississippi? 24 A. Correct. 25 Q. And Espy was running statewide?</p>

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<p>1 A. Correct. But you know there's a great 2 literature about coattails and about how the top 3 of the ticket can influence down ballot races. 4 Particularly, presidential coattails. And so the 5 fact that in District One that President Obama won 6 53.9 percent of the vote, you would have expected, 7 right, that he would have helped down ballot 8 tickets. The same thing with Mike Espy. 9 So there are different dynamics in those 10 races, but you have a lot of people who come in 11 and -- you know, a rising tide lifts all boats. 12 Q. You also testified earlier that because 13 the Supreme Court races are nonpartisan, there is 14 a ballot dropoff effect? 15 A. There is. 16 MR. WALLACE: Object to the form as 17 mischaracterizing. I don't think he said that 18 before, but I may be wrong. 19 THE WITNESS: Well, there is ballot 20 roll-off. There is ballot roll-off. And you do 21 have more ballot roll-off in nonpartisan elections 22 compared to partisan elections. But what the -- 23 the effect of that, right, I think I would quibble 24 with because you don't necessarily know, like, is 25 it 20 percent of one party or certain demographics</p>	<p>1 conclusion about the Gingles case. He may answer 2 if he understands it. 3 THE WITNESS: Well, I say in paragraph 4 53, the evidence does not support the third 5 precondition that the majority group does not vote 6 as a block such that likely -- such that will 7 usually defeat the minority group's preferred 8 candidate. In fact the mixed success of African 9 American candidates in District One elections 10 strongly suggest that voters, both white and 11 black, are making decisions based on suitability 12 of the candidates themselves. 13 Q. (By Mr. Cheung) And I'm saying 14 underlying that conclusion in paragraph 53, are 15 you relying on the fact that Justice King was not 16 challenged in his reelections and the fact that 17 Justice Graves won his reelection? 18 A. I rely on the fact that African American 19 candidates in District One elections for the State 20 Supreme Court win and sometimes aren't even 21 challenged. 22 Q. And so your view is that in evaluating 23 Gingles three, we have to take into account the 24 fact that Justice King was not challenged in his 25 two reelections?</p>
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<p>1 or not. That we don't know. 2 Q. (By Mr. Cheung) And you would agree 3 that Obama, Espy, Banks, Westbrooks, they're all 4 different candidates in terms of name recognition? 5 A. Yes. 6 Q. They likely differ in terms of 7 fundraising capacity as well? 8 A. Yes. 9 Q. They also differ in terms of incumbency 10 advantage? 11 A. Obama in '12 was an incumbent, Banks was 12 an incumbent -- no, that was a different Banks. 13 MR. WALLACE: Different Banks. 14 THE WITNESS: Different Banks, okay. 15 Espy was not an incumbent and neither was 16 Westbrooks. So the only incumbent was Obama. 17 Q. (By Mr. Cheung) So going back to how we 18 defined the third Gingles precondition about white 19 block voting overcoming black block voting. Is it 20 your conclusion that Gingles three is not 21 satisfied in this case in part because black 22 incumbents like Justice Graves and Justice King 23 have won in District One? 24 MR. WALLACE: I'm going to object to the 25 form of that because it does ask for a legal</p>	<p>1 MR. WALLACE: Again, that's a legal 2 question -- a legal opinion. I may object to the 3 form. He may answer. 4 THE WITNESS: I would say that when you 5 have a competitive legal environment and you have 6 justices challenged all the time, except for one 7 justice, that suggests that that justice is doing 8 something right. And I'm not aware of a story 9 that one can tell that you'd have a political 10 party or candidate say oh, you know, I'd love to 11 have that seat, but I'm not going to do it because 12 it would look bad. That's just not how politics 13 works in the way that I'm familiar with. And so 14 the fact that, yeah, he's not even challenged and 15 that he's winning is, I think, really important. 16 Because he might -- you know, District One, right, 17 Justice Kitchens is a Democrat, too. So Justice 18 King if he were challenged would likely win. No 19 one is even bothering. 20 Q. (By Mr. Cheung) Do you agree that 21 Justice Graves won in part because he was an 22 incumbent at the time? 23 A. Well, if you look at Appendix A, then 24 yeah, we only have one incumbent who lost. So 25 looking at those elections, I would say that him</p>

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<p style="text-align: right;">Page 166</p> <p>1 being an incumbent was certainly helpful.</p> <p>2 Q. And so would it change your conclusion</p> <p>3 if I told you that in the Gingles case the Supreme</p> <p>4 Court ruled that we should disregard special</p> <p>5 circumstances such as victories by black</p> <p>6 candidates when they run unopposed or when they</p> <p>7 have an incumbency advantage?</p> <p>8 MR. WALLACE: Object to the form, since</p> <p>9 you're asking him about a Supreme Court opinion,</p> <p>10 but he may respond.</p> <p>11 THE WITNESS: Would it change my</p> <p>12 conclusion? No. I would say that that -- I mean,</p> <p>13 that may be their conclusion, but as a matter of,</p> <p>14 like, social science or whatever, that's nonvalid.</p> <p>15 Q. (By Mr. Cheung) Okay.</p> <p>16 A. I mean at that point we're eliminating</p> <p>17 useful information.</p> <p>18 Q. But in paragraph 53 where you cite the</p> <p>19 third precondition of Gingles, are you purporting</p> <p>20 to faithfully apply the Gingles factor?</p> <p>21 A. I'm purporting to say that based on the</p> <p>22 data, African American candidates in District One</p> <p>23 elections win. That's what I'm saying.</p> <p>24 Q. You don't have an opinion on whether or</p> <p>25 not your data disproves the existence of the third</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Dr. Bonneau, you were asked a few</p> <p>2 questions some time ago about House Bill 1020</p> <p>3 because you talked to Yahoo News. Do you have any</p> <p>4 personal knowledge regarding the enactment of</p> <p>5 House Bill 1020?</p> <p>6 A. I do not.</p> <p>7 Q. Have you undertaken any study or</p> <p>8 analysis regarding the enactment of House Bill</p> <p>9 1020?</p> <p>10 A. I have not.</p> <p>11 Q. And are you here today to offer any</p> <p>12 expert opinions regarding the enactment of House</p> <p>13 Bill 1020?</p> <p>14 A. Not that I'm aware of.</p> <p>15 MR. WALLACE: We've got nothing further.</p> <p>16 (Time Noted: 12:39 p.m.)</p> <p>17 SIGNATURE/NOT WAIVED</p> <p>18 ORIGINAL: MR. CHEUNG, ESQ.</p> <p>19 COPY: MR. WALLACE, ESQ.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 167</p> <p>1 Gingles precondition?</p> <p>2 A. I do not.</p> <p>3 Q. Okay. All right. I'm done with my</p> <p>4 questions for now.</p> <p>5 (Off the record.)</p> <p>6 MR. WALLACE: We're back on the record.</p> <p>7 What worried us is tendering the witness "for</p> <p>8 now." I have a very few questions about questions</p> <p>9 that you asked earlier. And if any of these</p> <p>10 questions cause you to come back with anything</p> <p>11 about these questions, I think you've got a right</p> <p>12 to do it. But I don't think you've got a right to</p> <p>13 come back and ask anything else. And if you were</p> <p>14 intending to suggest you may have other questions</p> <p>15 later, then I would ask you to go ahead and ask</p> <p>16 them now. I've got two or three questions about</p> <p>17 what he's already said and then we're done.</p> <p>18 MR. CHEUNG: Okay. Appreciate that,</p> <p>19 Mike.</p> <p>20 MS. JONES: I think we're done.</p> <p>21 MR. WALLACE: You're done as far as --</p> <p>22 MR. CHEUNG: Yes.</p> <p>23 MR. WALLACE: If any of this sets you</p> <p>24 off, you have a right to --</p> <p>25 EXAMINATION BY MR. WALLACE:</p>	<p style="text-align: right;">Page 169</p> <p>1 CERTIFICATE OF DEPONENT</p> <p>2 DEPONENT: CHRISTOPHER BONNEAU</p> <p>3 DATE: September 29, 2023</p> <p>4 CASE STYLE: DYAMONE WHITE, ET AL. vs. STATE BOARD</p> <p>5 OF ELECTION COMMISSIONERS, ET AL.</p> <p>6 ORIGINAL TO: MR. CHEUNG, ESQ.</p> <p>7 I, the above-named deponent in the</p> <p>8 deposition taken in the herein styled and numbered</p> <p>9 cause, certify that I have examined the deposition</p> <p>10 taken on the date above as to the correctness</p> <p>11 thereof, and that after reading said pages, I find</p> <p>12 them to contain a full and true transcript of the</p> <p>13 testimony as given by me.</p> <p>14 Subject to those corrections listed below,</p> <p>15 if any, I find the transcript to be the correct</p> <p>16 testimony I gave at the aforesaid time and place.</p> <p>17 Page Line Comments</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p> <p>_____ This the ____ day of _____, 2023.</p> <p>_____ CHRISTOPHER BONNEAU</p> <p>State of Mississippi</p> <p>County of _____</p> <p>Subscribed and sworn to before me, this the</p> <p>____ day of _____, 2023.</p> <p>My Commission Expires: _____</p> <p>_____ Notary Public</p>

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CERTIFICATE OF COURT REPORTER

I, Robin G. Burwell, Court Reporter and
Notary Public, in and for the State of Mississippi,
hereby certify that the foregoing contains a true
and correct transcript of the testimony of
CHRISTOPHER BONNEAU, as taken by me in the
aforementioned matter at the time and place
heretofore stated, as taken by stenotype and later
reduced to typewritten form under my supervision by
means of computer-aided transcription.

I further certify that under the authority
vested in me by the State of Mississippi that the
witness was placed under oath by me to truthfully
answer all questions in the matter.

I further certify that, to the best of my
knowledge, I am not in the employ of or related to
any party in this matter and have no interest,
monetary or otherwise, in the final outcome of this
matter.

Witness my signature and seal this the
11th day of October, 2023.


ROBIN G. BURWELL, #1651
CRR, RPR, CCR

My Commission Expires:
April 6, 2025

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